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AGREEMENT FOR PROFESSIONAL SERVICES

FOR CONTRACT TITLE

CONTRACT NO. E@@@@@E@@

BETWEEN

KING COUNTY

AND

LEGALNAME

**EXECUTED COUNTERPARTS
COUNTERPART NO. _____ OF 4**

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AGREEMENT FOR PROFESSIONAL SERVICES

FOR

CONTRACT TITLE

CONTRACT NO. E@@@@@E@@

THIS AGREEMENT, made and entered into by and between King County, through the Department of @ ("County") and LegalName ("ConsultantName"), a corporation with a place of business at @, @, Washington, 98@, collectively referred to as "Parties", shall be effective upon the authorized signatures of both Parties to this Agreement ("Effective Date").

Definitions:

The term Agreement and Contract shall be used interchangeably and refer to this Agreement, Contract No. E@@@@@E@@. The term Consultant shall include ConsultantName and all subconsultants performing services under this Agreement.

The term Work Order refers to the document issued by King County authorizing the completion of a scope of work and Work Order budget issued pursuant to the Agreement.

The term Project shall refer to the project involved in each Work Order.

The term Amendment refers to a modification to the overall Agreement.

The terms change to Work Order refers to changes to a specific work order.

The term Work Order Price refers to a work order that is compensated on a lump sum basis.

The term Work Order Budget refers to a work order that is compensated on a cost plus fixed fee basis.

The terms Fixed Professional Fee percentage is the fee percentage amount established in Exhibit B, Cost Summary.

SECTION 1. PERIOD OF PERFORMANCE

IF OPTION YEAR USE:

- A. The Period of Performance shall end 365 calendar days after execution of this Agreement; provided however, at the County's sole discretion, this Agreement may be extended for up to two additional years in one-year increments or until the not to exceed total Price is reached, whichever comes first. Execution of the Agreement is the date the County signs this Agreement. In no event shall this Agreement be extended beyond the three years. If the County determines to extend this Agreement as described herein, the County shall issue an amendment extending the Period of Performance.

IF NO OPTION YEAR USE:

- A. The Period of Performance shall end 365 calendar days after execution of this Agreement.
- B. Time. Time is a material consideration in the performance of all work by the Consultant under this Agreement.
1. The Consultant shall complete its work and services within the Work Order schedule, including any established milestones and task completion dates set forth in the Work

Order Scope of Work. The completion dates for tasks may be modified by a written directive.

2. The Work Order schedule, milestones, and task completion dates shall not be extended because of any unwarranted delays attributable to the Consultant. The Work Order schedule, milestones, and task completion dates may be extended in the event of a delay caused by the County which results in a delay in the performance of an affected task, because of unavoidable delay caused by any governmental action, or other conditions beyond the control of the Consultant, which could not be reasonably anticipated and which results in a delay in the Work Order schedule, milestones and task completion dates.
3. The Total Price, Fixed Professional Fee, Period of Performance, and Work Order budget and Work Order price shall not be increased because of any unwarranted delays or costs attributable to the Consultant. In the event of a delay not attributable to the Consultant which (1) delay could not be reasonably anticipated and (2) results in an increase in costs to perform the work, the County may, through a written directive increase the Work Order budget.
4. The Period of Performance for the Agreement may only be modified through an amendment; provided however, in no event shall the Total Price, Period of Performance and/or Fixed Professional Fee percentage be increased.

SECTION 2. ADMINISTRATION AND SUPERVISION

- A. COUNTY. Management and general supervision for the Agreement will be the responsibility of the County, Department of @.
1. The Department Director or its designee shall be identified in writing at the time of execution of the Agreement. The Department Director and its designee are the only authorized County personnel who may sign amendment(s) and authorize changes to the Period of Performance up to the maximum time limits identified in the Agreement.
2. An employee of the County, hereinafter called the "Project Representative," who shall be designated in writing by the County, shall perform day-to-day management of this Agreement. All written correspondence shall be directed to the Project Representative.
 - a. Unless otherwise indicated in writing by the Department Director or its designee, the Project Representative will issue notices to proceed, approve and execute Work Order scope and budget, approve all requests for payment, authorize termination or modification of tasks, and approve in writing changes to the Work Order scope and budgets, provided the changes do not impact the Total Price, Period of Performance, and the Fixed Professional Fee percentage.
 - b. The Project Representative will also be responsible for determining when the Consultant has satisfactorily performed all work and for ensuring that the Consultant complies with all provisions of this Agreement, including non-discrimination and affirmative action requirements.
3. An employee of the County, hereinafter called the "Work Order Project Manager" shall be responsible for day-to-day management of individual work orders. For each Work Order the Project Representative will designate one Work Order Project Manager. Work Order Project Manager can not change the Work Order budget and schedule.

- a. The Work Order Project Manager will negotiate Work Order scope and budget.
 - b. The Work Order Project Manager, in consultation with the Project Representative, will also be responsible for determining when the Consultant has satisfactorily performed all work and for ensuring that the Consultant complies with all provisions of this Agreement, including non-discrimination and affirmative action requirements.
- B. **CONSULTANT.** ConsultantName represents that it has, or will obtain, all personnel necessary to perform the services required under this Agreement and that such personnel shall be qualified, experienced and licensed as may be necessary or required by laws and regulations to perform such services. All services required under this Agreement shall be performed by the ConsultantName, its employees, or by subconsultants whose selection has been authorized by the County; provided, that the County's authorization shall not relieve the Consultant from any duties or obligations under this Agreement or at law to perform in a satisfactory and competent manner.
 1. Authorized Subconsultants. The Agreement shall identify in the Cost Summary, Exhibit B, and the subconsultants who are authorized to perform work under this Agreement.
 2. Process for Adding or Removing Subconsultants. If during the term of this Agreement, ConsultantName wishes to add or remove a subconsultant, ConsultantName shall provide the Project Representative with a written request identifying the proposed change. The written request shall include the following information:
 - a. Identity of the subconsultant and the work to be performed;
 - b. Resumes and documentation outlining the subconsultant's experience;
 - c. Direct Labor Costs (labor rate or billing rate), Indirect Costs, Other Direct Costs, Fixed Professional Fee, and supporting documentation; and
 - d. If the subconsultant is to perform work of ConsultantName or another subconsultant already identified in Exhibit B, an explanation of why the work is going to be transferred to a new subconsultant.
 3. County Approval of Subconsultants. Before any subconsultant not already identified in the Agreement can perform any work under this Agreement, the County shall provide written authorization. Authorization shall not be unreasonably withheld. Such written authorization shall be followed up with an amendment to the Agreement.
 4. Substitution of Personnel. The Consultant recognizes and agrees that if a change is made substituting or changing assigned personnel, the Consultant shall be responsible for all costs associated with "Transfer of Knowledge and Information". The Transfer of Knowledge and Information shall be defined to include the labor hours spent reviewing project documentation, participating in meetings with project personnel, and participating in site visits to familiarize oneself with the project and project location(s). The County shall not pay for any time spent for the "Transfer of Knowledge and Information".
 - a. The Consultant shall provide sufficient advance notice of any intention to remove or reassign personnel. The Consultant shall not remove or reassign the Key Personnel assigned to the project without written consent from the County.

- b. The Consultant shall not remove or reassign the personnel assigned to a Work Order without written consent from the Work Order Project Manager. Removal or reassignment of personnel on a Work Order shall not impact the Work Order budget.
- (1) Key Personnel. Exhibit F, Key Personnel, is a listing of individuals. Notice for the substitution of individuals and positions identified as Key Personnel shall include the following:
 - (a) An explanation of the reason for the reassignment or removal;
 - (b) The name of the person proposed to replace the individual;
 - (c) Identification of the experience and qualifications of the individual proposed;
 - (d) A plan and schedule showing how the Transfer of Knowledge and Information between the departing and incoming individual will occur; and
 - (e) Proposed allocation of hours associated with the entire Transfer of Knowledge and Information.
- (2) Individuals Other Than Key Personnel. For individuals who are not identified as "Key Personnel" in Exhibit F, ConsultantName does not need to provide advance notice to the Project Representative, provided however, the substituted individual's labor rate was approved in the Agreement, Exhibit B. If the labor rate was not approved in Exhibit B, then ConsultantName shall provide documentation supporting the labor rate for the substituted personnel prior to submitting an invoice and the labor rate shall not significantly differ from the originally assigned personnel.
- c. The Consultant shall provide a certification with its invoice certifying that the time associated with the "Transfer of Knowledge and Information" is not billed to the County and is not a cost borne by the County.
- 5. County Request Removal Personnel. ConsultantName shall remove from the project any personnel or subconsultant if, after the matter has been thoroughly considered by the County and the Consultant, the County considers such removal necessary and in the best interests of the project and so advises ConsultantName in writing.

C. WORK ORDER PROCESS

- 1. County Initiates Work Order Process. After execution of this Agreement by the County and the Consultant, the Project Representative may request ConsultantName to submit a proposal by issuing a written Work Order Request. The Work Order Request shall include a description of the nature and extent of the project, its scope, a preliminary schedule and budget, and a list of probable deliverables.
- 2. No work order shall exceed \$125,000 unless prior written approval is received from the Director of @ Division.
- 3. Consultant Proposal. ConsultantName shall submit a proposal addressing the Work Order Request, which proposal shall include a Work Order budget, level of effort identifying personnel and Labor Rates per task, Key Personnel when requested, and schedule. The proposal shall use the cost elements (Labor Rates, Overhead, Other Direct Costs, Fixed Professional Fee, and Billing rates) identified in Exhibit B, Cost Summary, attached hereto and incorporated herein by reference.

4. Execution of the Work Order. The parties will negotiate and formalize the agreement reached in an executed Work Order. An executed Work Order is a Work Order that is signed by both parties or a letter from the Project Representative identifying all elements of the Work Order.
 - a. Elements of a Work Order. A Work Order shall include, at a minimum, the following elements: detailed scope of work with specified deliverables, schedule for deliverables and completion of the Work Order, Key Personnel when requested, and level of effort identifying hours associated with personnel and Labor Rates for each task and subtask. Work Orders should be numbered sequentially.
 - b. Work Order budget. A budget for the task(s) comprising a Work Order will be established as part of the finalized Work Order. The Consultant shall complete its work and services within said Work Order budget and task budgets.
 - c. Disagreement with Work Order Letter. If the Consultant disagrees with any elements identified in a letter executing the Work Order, the Consultant shall notify the Project Representative within three (3) business days after receipt of the letter. The Consultant shall not perform any work identified in the letter until the parties have reach agreement on the Work Order elements and such terms have been formalized in a letter sent by the Project Representative or a Work Order signed by both parties.
5. Notice to Proceed. The Project Representative may issue a notice to proceed for the Work Order or specific tasks therein. Upon receipt of a notice to proceed, the Consultant shall promptly commence work identified in the notice to proceed.
6. Limitations to Initiating and Executing Work Orders. Execution of individual Work Order(s) may occur at any time up until the Period Of Performance has expired or the Total Price is reached, whichever occurs first. A Work Order shall not be executed after the Period of Performance has expired.
 - a. Continuation of Agreement. If services to be performed under an executed Work Order continue after expiration of the Period of Performance, this Agreement shall continue to be in full force and effect with respect to that executed Work Order; provided however, no additional Work Orders may be issued or executed.
7. Work Orders under \$10,000. In certain circumstances the County may have an immediate need for the Consultant to perform limited services quickly. In such event, the Project Representative may direct the Consultant in writing to perform services for a specified scope of work, identifying the personnel who will perform the services and a not to exceed dollar limitation. In no event shall a Work Order issued under this provision exceed \$10,000.

SECTION 3. SCOPE OF WORK

- A. The County hereby retains the Consultant upon the terms and conditions contained herein to perform certain work and services on a Work Order basis, as required by the County during the Period of Performance. A general description of the work and services to be performed by the Consultant are set forth in Exhibit A, Scope of Work, attached hereto, and incorporated herein by this reference.
- B. The County may make available to the Consultant, without cost, copies of as-built plans, drawings, survey notes, studies, soil reports, maintenance and performance records, and other relevant data, and property descriptions of various County facilities related to

work authorized under a Work Order, which are readily available, and on file at the County. These documents are available solely as additional information to the Consultant and do not relieve the Consultant of its duties and obligations under this Agreement nor constitute any representation, warranty or guarantee by the County as to conditions or other matters related to a Work Order. The Consultant may reasonably rely on the data contained in such documentation; however, the Consultant is responsible to perform a review of the data within thirty (30) calendar days of receipt of the data and notify the County immediately in writing of any perceived defects, inaccuracies or discrepancies with the data. If, at a later time, the Consultant discovers any defects with the data, ConsultantName shall immediately inform the County in writing of such defects, inaccuracies or discrepancy.

- C. It shall be the responsibility of the Consultant to gather and become familiar with all reasonably available site information including existing improvements.

SECTION 4. CHANGES IN WORK

A. Amendments to the Agreement.

1. Any changes to the Contract documents, except executed Work Orders, shall be made through an amendment signed by the Department Director or its designee.
 - a. **@FOR ROADS ONLY** The term amendment may be used interchangeably with the term Supplement.
2. The following actions shall be made through the execution of an amendment:
 - a. County exercising its option to extend the Period of Performance; provided however, the Period of Performance is not extended past three years.
 - b. Adding subconsultants and identifying cost elements associated with the subconsultant overhead, labor, and billing rates and fee.
 - c. Modifying existing Overhead and Labor Rates; provided the Total Price and Fixed Professional Fee percentage shall not be changed..
3. An amendment executed by the County and ConsultantName represents full and final agreement and resolution.

B. Authority of the Project Representative.

1. Directives
 - a. The Project Representative may, at any time, by written or oral directive require the Consultant to perform work consistent with the Work Order's Scope of Work; provided that this directive does not add scope or cost to the project.
 - b. If the Project Representative gives the Consultant an oral directive, the Consultant shall document the oral directive and provide the Project Representative with a copy of the documented oral directive within seven (7) calendar days of the directive.
 - c. A written or oral directive to the Consultant from anyone other than the Project Representative is not binding on the County.
 - d. Any directive shall not constitute an amendment to the Agreement nor entitle the Consultant to any additional compensation or a time adjustment

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2. Adjustments to Work Order Task Budgets

- a. The Project Representative may adjust the task budgets within a Work Order, provided that the Work Order budget, schedule, and/or the Fixed Professional Fee are not impacted or affected by the adjustment to the task budget.
- b. Adjustments to task budgets must be authorized in writing by the Project Representative prior to the work being performed and such authorization must specifically identify the task budgets impacted and the specific scope of work to be performed. Written authorization will include a Budget Crosswalk for task budget adjustment on the County authorized form (See Exhibit H) and a detailed description of the dollars that are being moved from a particular task and subtask to the new task and subtask, and .
- c. Adjustments to task budgets are only authorized when:
 - (1) Money is taken from a task budget where the work is complete and there is money remaining in the task budget; or
 - (2) Money is moved between tasks and there is no impact on the Work Order schedule, Fixed Professional Fee or the Work Order budget.
- d. Any directive and any adjustment in the task budgets shall not constitute a change or entitle the Consultant to additional compensation or a time adjustment.

3. Changes to executed Work Orders

- a. The Project Representative may, at any time, by written directive direct the Consultant to make additions within the general scope of the services or work to be performed in a Work Order, and/or delete or revise portions of the Work Order.
 - (1) Any directive from the County to perform work that results in an increase or decrease in scope, changes to the Work Order budgets or Work Order schedule, or changes impacting the amount of the Work Order Fixed Professional Fee shall be made only by written agreement by the Project Representative prior to the work being performed.
- b. Any written directive to the Consultant from anyone other than the Project Representative is not binding on the County.

C. Consultant Notice of Issues that May Impact Work Order Scope, Schedule and Budget.

1. In the event the Consultant identifies something that may impact a Work Order scope of work, Work Order Project Schedule, Work Order budget, and/or task budget(s), ConsultantName shall inform the Project Representative in writing prior to exceeding the Work Order budget and/or task budget(s) and within seven (7) calendar days of the event and possible impacts to scope, schedule, and/or budget. If appropriate, the parties shall execute a Work Order amendment to adjust the Work Order scope, schedule and/or budget prior to the work being performed.

D. Request for Change to Work Order.

1. If the Consultant believes work identified in a directive and/or adjustment to a task budget is not within the Work Order scope of work and/or causes an increase or decrease in cost or time required for performance of any services under the Work Order, ConsultantName shall within seven (7) calendar days of the directive or

adjustment to a task budget, on behalf of itself or its subconsultants, and prior to performing any work, request in writing a cost or time adjustment to the Work Order budget. Such request for an adjustment shall be submitted to the Project Representative.

2. The Consultant shall not perform the work identified in the directive and/or adjustment to the task budget until the County and Consultant execute a Change to Work Order pursuant to this Section or the County issues a written letter denying the Consultant's request for a cost and/or time adjustment.
3. After receiving the County's denial letter, even if the Consultant disagrees with the County's decision, the Consultant shall perform the work as indicated in the directive and/or task budget adjustment. If the Consultant disagrees with the County's denial, ConsultantName shall notify the Project Representative of its disagreement and the reasons for its disagreement within seven (7) calendar days of receipt of the County's denial letter and the Consultant shall submit in accordance with Section 19 a claim for adjustment in writing to the Department Director's designee within thirty (30) calendar days from the date of receipt of the County's decision. The County shall identify the Department Director's designee for purposes of this paragraph and Section 19 in the County's denial letter. Failure to file a written claim for adjustment shall constitute acceptance of the County's decision and shall waive the Consultant's right to additional compensation or a time extension.

USE THE FOLLOWING CLAUSES FOR (FMD) ONLY

- E. It is King County's intention to complete this project through construction and final acceptance. In addition to work performed under the BASIC and ADDITIONAL SERVICES of this Agreement, the Consultant may be requested in writing to perform extra or follow-on work to complete this project. In such event, the parties hereto have the right to amend this Agreement to include these EXTRA SERVICES. The parties agree to negotiate the compensation for those EXTRA SERVICES on a lump sum basis, which will include all reimbursable expenses and direct costs in connection with this project. No EXTRA SERVICES, for which additional compensation will be sought by the Consultant, shall be furnished without the prior written authorization of the County. Any changes, including EXTRA SERVICES, to the general Scope of Work, which result in a change in time of performance or costs, shall only be made by amendment.

SECTION 5. RESPONSIBILITY OF THE CONSULTANT

A. Standard of Care.

1. During performance under this Agreement, the Consultant shall make its best efforts to manage the Agreement such that work and services are provided and performed in a cost-effective and efficient manner. The Consultant shall complete its work and services within said Work Order budget.
2. The Consultant shall be responsible for the professional quality, technical adequacy and accuracy, timely completion and coordination of all plans, designs, drawings, specifications, reports and other services prepared or performed pursuant to this Agreement. The Consultant shall perform its work in accordance with the requirements of this Agreement and pursuant to the standards of professional care, skill, diligence and competence as are normally exercised by other members and/or firms of the profession in good standing working under the same or similar conditions and circumstances and in similar communities as the services provided by the

Consultant under this Agreement The Consultant shall be responsible for the professional standards, performance and actions of all persons and firms performing work pursuant to this Agreement on behalf of Consultant. The Consultant shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in such plans, designs, drawings, specifications, reports and other services not in compliance with the requirements of this Agreement and/or not meeting the Consultant's professional standards of care, skill, diligence and competence for the work to be performed for this project; and Consultant shall promptly reimburse the County for any and all costs or damages incurred by the County, including but not limited to the cost to redesign the project and the cost to repair or replace the defective in-place work. The County shall also have the right to deduct from payments to the Consultant any costs or damages incurred by the County, or which may be incurred by the County, as a result of the Consultant's failure to comply with the requirements of the Agreement or failure to meet the professional standard of care and skill, or both.

3. The County's approval of plans, drawings, designs, specifications, reports and other products of the professional services rendered hereunder shall not in any way relieve the Consultant of responsibility for the technical adequacy or accuracy thereof. Neither the County's review, approval, acceptance of, and/or payment for any services shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement. The County shall make a good faith effort to review materials in an expeditious manner; provided however that the County shall have a minimum of thirty (30) calendar days to review and provide comments on plans, drawings, specifications, reports or other products. The County typically completes its review within forty-five (45) calendar days.
4. Should the Consultant produce and maintain a document criticizing, challenging, or disagreeing with any decisions by the County concerning design and/or management of this Agreement or Work Order, the design, and/or any findings or final conclusions, the Consultant shall (a) first discuss the matter with the County and try to reach resolution and (b) provide the County with a copy of the document within five (5) calendar days of producing the document. Any such document shall identify reasonable and realistic solutions.
5. The Consultant shall be knowledgeable and familiar with the County's Construction General Conditions and any County provided Division 0 and technical specifications (Division 1). Any technical specifications drafted by the Consultant shall be consistent with these Divisions and such technical specifications should not create any ambiguity or conflict with these Divisions.
6. The Consultant shall not assign, sublet, mortgage, pledge as collateral, substitute for obligation, or otherwise encumber any rights, duties or interests accruing from this Agreement, other than accounts receivable, without the prior written consent of the County. Unless otherwise stated in the written consent to the assignment, sublet, mortgage, pledge or encumbrance, no such consent shall release the Consultant from any obligation under this Agreement.

B. Maintenance of Project Documentation.

1. Document Retention Policy. The Consultant shall establish a Document Retention Policy consistent with Washington state law, King County Code, and the following requirements:

- a. The Consultant shall comply with the Document Retention Policy.
 - b. The Document Retention Policy shall define Official Project Documentation and require that Official Project Documentation and other appropriate documentation be maintained in the Work Order file.
 - c. Draft reports, specifications and drawings are not considered valid Official Project Documentation as they have been replaced and/or superseded by the final report, specifications, and drawings. The Document Retention Policy should address how draft reports, specifications and drawings are maintained in Work Order file.
 - d. In addition to printed copy of all project documentation, the Consultant shall create and maintain documents on software format (and version) approved by the County.
 - e. The Consultant shall review its email to determine whether the email is considered Official Project Documentation or other appropriate documentation to be maintained in the Work Order file. Any email not considered Official Project Documentation or appropriate documentation for the Work Order file shall be deleted and not maintained in the Work Order file.
 - f. The County shall review and approve the Document Retention Policy.
 - g. The Work Order file shall be available for review by the County or an authorized representative at any time.
 - h. Consultant shall maintain all documents for a period of not less than six (6) years after Final Acceptance of all construction projects related to this Agreement or until resolution of any litigation related to this Agreement or any related construction contract, whichever occurs later.
2. Upon written request by the Project Representative, the Consultant shall provide the County with access to all documents and correspondence, including e-mail communications, memoranda, and all other written materials prepared or used in performance of work on this Agreement and/or Work Order.
 3. The Consultant is cautioned that information and documentation submitted to the County may become a public record in accordance with the Revised Code of Washington and may not be exempt from disclosure under the Washington State Public Disclosure Act.
 - a. Consultant shall mark all pages of Consultant's financial or personnel information that it considers proprietary or confidential. In the event the County receives a public disclosure request for such documentation, the County will advise the Consultant and will not release the marked documents for a period of not less than ten calendar days in order to give the Consultant an opportunity to obtain a court order prohibiting the release of the information in response to the public disclosure request. The County cannot insure that the Consultant's confidential or proprietary information would not be subject to release pursuant to a public disclosure request.

C. Duty of Confidentiality.

1. The Consultant acknowledges that unauthorized disclosure of information or documentation concerning this Agreement and/or Work Order may cause substantial economic loss or harm to the County. Except as otherwise required by Court Order

or subpoena, the Consultant shall not without prior written authorization by the Project Representative:

- a. Allow the release, dissemination, distribution, sharing, or otherwise publication or disclosure of information or documentation obtained, discovered, shared or produced pursuant to this Agreement;
 - b. Allow the release, dissemination, distribution, sharing, or otherwise publication or disclosure of information or documentation which relates to the technical or business activities of the County obtained, discovered, shared or produced pursuant to this Agreement; and/or
 - c. Disclose to any third party any calculations, notes, reports, drawings, electronic files, including all emails, or any other materials, information or this Agreement.
2. The Consultant may disclose information and documentation to individuals who have a substantial need to know the specific information in question in connection with the Consultant's exercise of rights or performance of obligations under this Agreement. The Consultant shall inform its subconsultants, employees, and representatives of their obligations under this Agreement and instruct them so as to ensure such obligations are met. If so requested by the Project Representative, the Consultant further agrees to require its subconsultants and individuals performing services pursuant to this Agreement to execute a Confidentiality Agreement.
 3. The Consultant shall not release any information or documentation concerning the work under this Agreement or any part thereof in the form of advertising, marketing activities or publication including news releases or professional articles, without the prior written approval of the Project Representative. All news releases, professional articles, advertising, publicity, or other marketing activities, which describes or discusses the Agreement and/or Work Order shall be reviewed and approved by the Project Representative prior to publication, disclosure, and/or distribution. The Consultant may submit for review and approval a generic project abstract describing the component parts of the Agreement and/or Work Order. After receiving written approval of the project abstract from the Project Representative, the Consultant may make minor insignificant changes to the project abstract and use all or parts of the project abstract in proposals.
- D. In the event of any breach or threatened breach by the Consultant or subconsultants of their Duty of Confidentiality and the Maintenance of Project Documentation, the County will have all rights and remedies that are available to it at law or equity.
- E. This Section shall survive for six (6) years after the termination or expiration of this Agreement.
- F. ConsultantName shall ensure that the paragraphs in Section 5, Responsibility of the Consultant, are included in each subconsultant's contract for work on the Agreement and/or Work Order.

SECTION 6. DELIVERABLES

- A. In the performance of this Agreement, the Consultant shall, to the extent practicable, design and draft specifications that provide for maximum use of structures, machines, products, materials, construction methods, and equipment which are readily available through competitive procurement and through standard or proven production techniques, methods and processes.

- B. Unless the Consultant has provided a written justification for the use of a single source and/or restrictive design or specification and the County provides written concurrence of such use, the Consultant shall not, in the performance of the work under this Agreement:
 - 1. Produce a design or specification which would require the use of structures, machines, products, materials, construction methods, equipment, or processes which the Consultant knows to be available only from a single source; and/or
 - 2. Produce a design or specification which would be restrictive or written in such a manner as to contain proprietary, exclusionary, or discriminatory requirements other than those based upon performance.
- C. When one or more brand names or trade names of comparable quality or utility are listed the words "or approved equal" shall follow the brand name(s) and the salient characteristics shall be identified.

PLACE IN ALL CONTRACTS EXCEPT ROADS. PLACE IN ALL SOLID WASTE CONTRACTS UNLESS PR is 110% CERTAIN THE DESIGN WILL BE WA DOT .

- D. The County will not allow any specification provision that incorporates by reference text of any of the Washington State Department of Transportation ("WSDOT") specifications. The Consultant may utilize the text of WSDOT specifications by copying the text of the specification and eliminating all internal references to other WSDOT specifications.

THE FOLLOWING PARAGRAPH IS AN ALTERNATE - ONLY USE FOR WTD CONTRACTS

- E. Exhibit G, Wastewater Treatment Division (WTD) Design Deliverables, is attached hereto and incorporated herein by reference.

SECTION 7. COMMENCEMENT AND MONTHLY REPORTS

- A. Notice to Proceed. After execution of each Work Order, the County will issue a written notice to proceed on the Work Order or specific tasks thereof. Such notices to proceed will be provided for specific tasks identified as necessary to produce specified work products and shall set forth the date of commencement of the work, a description of the work to be performed, the schedule for the work authorized, and the budgets for such tasks. Upon receipt of a notice to proceed, the Consultant shall promptly commence work. Upon the satisfactory completion of the work, the County will evaluate such work.
- B. Monthly Reports. Unless otherwise stated in the Scope of Work, not later than the 10th day of each calendar month during the performance of the project, the Consultant shall submit to the Project Representative, a monthly report, in a format approved by the Project Representative. A monthly report is not needed if there are no Work Orders executed. Work Orders shall be identified in the monthly report by the associated Work Order number. Failure to provide timely monthly reports that comply with this provision may result in denial of payment and/or late payment. At a minimum the monthly report shall identify the following:
 - 1. For each Work Order identify costs incurred, budget status (budget vs. estimated cost to complete), changes to Work Order, revisions to Work Order scope and budget, project schedule, any variance between planned vs. actual performance, forecast completion date, all issues that may result in completion of any task beyond the established schedule or task budget, and all issues that may result in an increase in Work Order budget.
 - 2. For the Agreement as a whole identify the number of Work Orders issued, the number of executed Work Orders, and total overall budget, the budget per Work

Order, budget spent to date per Work Order, budget spent to date for all Work Orders, and status of each Work Order.

SECTION 8. COMPENSATION

- A. Subject to the provisions set forth in this Agreement, the County will pay the ConsultantName on a monthly basis for authorized and satisfactorily completed work and services rendered under this Agreement. The amounts to be paid to ConsultantName shall be computed as herein set forth. Progress payments shall be full compensation for work performed and services rendered, for all supervision, labor, supplies, materials, equipment or use thereof, taxes, and for all other necessary incidentals, but in no case shall the total progress payment(s) exceed the Total Price as defined herein. The amount to be paid to the Consultant shall be computed as hereinafter set forth; provided, that such payment shall not exceed a maximum amount of @ DOLLARS (@) ("Total Price"). **King County does not guarantee any minimum amount of work or that the value of the Work Orders executed will equal the Total Price.** In the event the Consultant incurs costs in excess of the Total Price or Work Order budget the County shall not be required to pay any part of such excess and the Consultant shall pay such excess from its own funds and shall have no claim against the County on account thereof unless (1) ConsultantName has filed a timely request for cost and/or time adjustment (Section 4) and timely claim and/or dispute (Section 19) and (2) resolution of the adjustment and/or claim or dispute is favorable to the ConsultantName.
- B. Compensation for work and services shall be on a cost plus fixed fee basis but not to exceed the Total Price. Compensation and the Work Order budget shall be the sum of Direct Labor Costs, Indirect Costs, Other Direct Costs and a Fixed Professional Fee, as described and defined below. Costs to be paid are identified on the Cost Summary, which is attached hereto as Exhibit B and incorporated herein by this reference, and comprise the following:
1. **Direct Labor Costs.** Direct Labor Costs shall be the total number of allowable hours worked on a Work Order by each individual multiplied by the Labor Rate identified in the Cost Summary (Exhibit B) for such individual.
 - a. The County shall only pay the Labor Rate and shall not pay any premium associated with overtime. @ Insert for CM contracts: Provided however, with the prior written approval of the Project Representative, if a field inspector (FLSA non-exempt employee) bills over forty (40) hours in a week (defined as Sunday through Saturday) on one Work Order:
 - (1) The County may pay an additional 50% of the Labor Rate for each hour in excess of 40; and
 - (2) The County shall not pay any overhead on this extra labor cost.
 - b. Labor Rates may be subject to reasonable adjustments in accordance with the following provisions:
 - (1) Labor Rates shall not be modified prior to @ MONTH< DAY< YEAR. After @ MONTH< DAY< YEAR, any increase in Labor Rates shall be effective for a minimum period of at least 365 calendar days.
 - (2) The County has established a maximum labor rate limitation. Labor rates shall not exceed the maximum labor rate limitation except in exceptional and rare circumstances when the County, in its sole discretion, determines it is appropriate to pay a greater rate.

- (3) The current maximum labor rate is @ \$71.74. The County will review the maximum labor rate limitation and adjust it either upward or downward in June of every year.
- (a) If the new maximum labor rate limitation is greater than the current maximum labor rate established in this Agreement, the new maximum labor rate will be effective at the next regularly scheduled date for labor rate adjustments. Adjustments are based on the most recent June maximum labor rate.
- (b) If the new maximum labor rate is less than the current maximum labor rate established in this Agreement:
- (i) For personnel already assigned to the Agreement who have reached the older higher maximum rate will maintain the rate previously approved by the County;
- (ii) For new personnel or personnel who have not reached the maximum labor rate limitation, the new lower maximum labor rate limitation will apply.
- (4) A Labor Rate increase must be based on an actual and verifiable increase in labor costs.
- (5) The County has the right to refuse increases that lack reasonable justification.
- (6) For each firm (ConsultantName and subconsultants) the cumulative effect of all labor rate increases shall not exceed the escalation percentage (in effect at the time of the Labor Rate adjustment and currently @ 1.8%) per year per firm.
- (a) Calculation for the first labor adjustment shall be as follows:
- (i) For each firm, add each individual's labor rate at the start of the contract (Base Labor Rate) together to determine the total base year labor rate (Hereinafter referred to as Firm's Base Labor Rate).
- (ii) For each firm, add each individuals proposed labor rate together to determine the total proposed labor rate (hereinafter referred to as "Proposed Labor Rate").
- (iii) If individuals have been added to the Agreement that were not originally included in the Firm's Base Labor Rate or removed from the Agreement sometime during the base year, the following adjustments shall be made to the Firm's Base Labor Rate to establish the Firm's Adjusted Base Labor Rate:
- a. Add the verifiable labor rate applicable to that time period for the individual(s) to the Firm's Base Labor Rate
- b. For individuals who are no longer available to work on the Agreement, subtract the Base Labor Rate for the individual from the Firm's Base Labor Rate.
- (iv) The Firm's Proposed Labor Rate must be no greater than the escalation percentage (in effect at the time of the Labor Rate

adjustment and currently @ 1.8%) of the Firm's Adjusted Base Labor Rate.

(b) Calculation for the second labor adjustment shall be as follows:

- (i) For each firm, the accepted Firm's Proposed Labor Rate becomes the Firm's Second Year Base Labor Rate. For each firm, each individuals accepted Proposed Labor Rate becomes the Second Year Base Labor Rate.
- (ii) For each firm, add each individuals proposed labor rate together to determine the total proposed labor rate (hereinafter referred to as "Second Year Proposed Labor Rate").
- (iii) If individuals have been added to the Agreement that are not included in the Firm's Second Year Base Labor Rate or removed from the Agreement sometime during the year, the following adjustments shall be made to the Firm's Second Year Base Labor Rate to establish the Firm's Adjusted Second Year Base Labor Rate:
 - a. Add the verifiable labor rate applicable to that time period for the individual(s) to the Firm's Second Year Based Labor Rate
 - b. For individuals who are not longer available to work on the Agreement, subtract the Labor Rate for the individual from the Firm's Second Year Base Labor Rate.
- (iv) The Firm's Second Year Proposed Labor Rate must be no greater than the escalation percentage (in effect at the time of the Labor Rate adjustment and currently @ 1.8%) of the Firm's Second Year Adjusted Base Labor Rate.

(7) ConsultantName shall provide a minimum of thirty (30) days advance written notice of a change in Labor Rate. ConsultantName shall submit only one written notice of a change in Labor Rate per year (365 calendar day time period) that must include all individual Labor Rate increases. All proposed changes to Labor Rates for ConsultantName and subconsultants shall be submitted in the one written notice. Unless the County disagrees in writing with the proposed Labor Rate(s), the Consultant may start billing at the new Labor Rate thirty (30) days after the advance notice; provided however, all new Labor Rates shall be effective at the beginning of a billing period. Labor Rates increases shall not be retroactive. Only services performed after the thirty (30) day time period shall be billed at the new Labor Rate. The written notice of the Labor Rate changes is considered a part of the Agreement documents and shall be incorporated into the Agreement in the next amendment. Written notice shall contain the following information:

- (a) For each Labor Rate increase, identify the name of each individual, job title/position, old Labor Rate, new Labor Rate, percentage rate increase; and
- (b) Affirmation that:
 - (i) The new Labor Rate represents the actual labor rate that is being paid to the employee as of the effective date of the rate increase;

- (ii) Labor Rate increases shall have no impact on the scope of work or Work Order total budget; and
 - (iii) The County will receive all services identified in the Work Order Scope of Work for the Work Order budget.
- c. The County or County's designee may audit the Consultant's books, records, and other supporting data relevant to the Labor Rate, including but not limited to other Agreement rates, terms and conditions in order to evaluate and validate any rate increases or decreases. Should the County determine that the Labor Rate charged to the County is more than the Labor Rate paid to an individual, the County shall be entitled to a refund of the difference between the actual rate paid to the individual and the rate paid by the County plus associated overhead on the on the overpaid portion of the Direct Labor Costs.
- 2. **Indirect Costs.** Indirect Costs shall be the Overhead Rate identified in the Cost Summary (Exhibit B) for the firm multiplied by the Direct Labor Rates for every allowable hour worked on a Work Order and billed by the individual.
 - a. Overhead Rates shall not be modified prior to @ MONTH< DAY< YEAR. After @ MONTH< DAY< YEAR, any change in the Overhead Rates shall be effective for a minimum period of at least 365 calendar days. ConsultantName shall submit only one request per year that must include all changes to the Overhead Rate for ConsultantName and subconsultants.
 - b. Overhead Rates shall be increased or decreased based on the County's review and approval of proposed Overhead Rate(s).
 - (1) The Consultant shall provide the County, on an annual basis, a copy of financial statements and overhead rates within 30 days of completion of the most current fiscal year review for ConsultantName and subconsultants. The Consultant is further obligated to provide the County with sufficient information concerning the overhead rate, including but not limited to annual audited overhead rates, any actual or provisional federal (FAR) overhead rates, and additional information as requested to validate overhead costs.
 - (2) The County or County's designee may audit the Consultant's books, records, and other supporting data relevant to the overhead rate, including but not limited to other Agreement rates, terms and conditions in order to evaluate and validate any rate increases or decreases.
 - (3) In the event the Consultant does not provide the County with the financial statement and supporting documentation and new overhead rate for each fiscal year, should the County determine that the Overhead Rate charged to the County is greater than the County verified overhead rate for that fiscal period, the County shall be entitled to a refund of the difference between the rate paid by the County and the overhead rate.
 - (4) When the County reviews requests to adjust Overhead Rates, the County will review and consider the actual historical overhead costs incurred by the firm with respect to Business & Occupational taxes; however, should the B&O tax percentage be increased or decreased, the County will make no adjustment to the Overhead Rate to account for future B&O taxes associated with costs for this Agreement.

DELETE THE SECTION IN PINK IF IT DOES NOT APPLY

- c. The County may pay an Associated Project Cost (APC) in addition to the Overhead Rate if, after reviewing sufficient auditable information, the County determines that costs included in the APC rate are clearly not included in the overhead rate.
- (1) APC includes but is not limited to all allowable costs associated with telephones, communication equipment, computers, software, computer support, information technology support, telecommunication, facsimiles, printers, copiers, cell phones, reproduction and duplication equipment and costs, and other miscellaneous company owned equipment and other miscellaneous related office costs. The approved APC rate shall be not be increased during the Period of Performance, including all amendments.
- (2) Profit, fee and any other type of mark-up are specifically prohibited on APC.
- (3) The County has only authorized @ (Insert Firms' Legal Name) to receive an APC. All other firms shall not be paid an APC.

CHOOSE APPLICABLE PROVISION

TYPE A:

- (a) @ NAME FIRM APC is \$@, which rate shall be paid for allowable hours performed and invoiced by @.

TYPE B:

- (a) @ NAME FIRM APC is \$@, which rate shall be paid on 25% of the total allowable hours performed and invoiced by @.

TYPE C:

- (a) @ NAME FIRM APC is \$@ for computer engineering work, which rate shall be paid for allowable hours performed and invoiced by @, except for hours spent on CADD or by CADD personnel.
- (b) @ NAME FIRM APC is \$@ for CADD work, which rate shall be paid for allowable hours performed and invoiced by @ for CADD personnel only.
- (c) These two rates cannot be combined on any individual.

TYPE D:

- (a) @ NAME FIRM APC is \$@ for computer engineering work, which rate shall be paid on 25% of the total allowable hours performed and invoiced by @, except for hours spent on CADD or by CADD personnel.
- (b) @ NAME FIRM APC is \$@ for CADD work, which rate shall be paid on 25% of the total allowable hours performed and invoiced by @ for CADD personnel only.
- (c) These two rates cannot be combined on any individual.

3. **Other Direct Costs.** Other Direct Costs ("ODC") are identified in Exhibit B, Cost Summary. ODC shall be billed at cost, without markup. Allowable ODC fall into two categories: Invoiced ODC and Lump Sum ODC. Invoiced ODC are approved in advance by the Project Representative and are actually incurred. For all Invoiced ODC, the Consultant shall have a receipt from an independent company for goods or

services and include Subcontract Costs and Travel Costs. Lump Sum ODC are negotiated and defined in the Work Order as Lump Sum ODC. All other ODC are unallowed costs.

- a. Subcontract Labor Costs. Authorized subcontract services (which include services provided by subconsultants) shall be compensated through (i) Labor Costs, Indirect Costs, and Fee, specifically authorized by the County and identified in the Cost Summary, Exhibit B or (ii) Billing Rate specifically authorized by the County and identified in the Cost Summary, Exhibit B. Any labor costs or indirect costs that are not utilized and billed by the subconsultant shall not be paid to the Consultant.
 - (1) Labor Costs. Labor Costs shall be calculated in the same manner as specified in Section 8 ¶B1 and subject to the provisions defined therein. Labor Rates for the subconsultants are identified for each individual in the Cost Summary, Exhibit B.
 - (2) Indirect Costs. Indirect Costs shall be calculated in the same manner specified in Section 8 ¶B2 and subject to the provisions defined therein. The Overhead Rate for each subconsultant is identified in the Cost Summary, Exhibit B.

CHOOSE APPLICABLE FEE PARAGRAPH:

FOR ALL AGENCIES EXCEPT WTD

- (3) Fee. The Fee for each subconsultant is established in Exhibit B and shall be managed and paid out in the same manner as the provisions dealing with Fixed Professional Fee (Profit) defined later in this Section.

FOR WTD ONLY.

- (3) Fee. The Fee for each subconsultant is established in Exhibit B and shall be paid out in a monthly basis for work satisfactorily completed.
 - (4) Billing Rate. Billing Rate(s) for the subconsultants are identified for each individual working on a Work Order in the Cost Summary, Exhibit B. Billing Rate costs shall be the total number of allowable hours worked on a Work Order by each employee multiplied by the Billing Rate for such employee. Billing Rates include all costs associated with labor, overhead and fee. The County shall only pay the Billing Rate and shall not pay any additional compensation for overtime, nor shall the County pay premium rates. The parties agree the Billing Rates identified in Exhibit B, Cost Summary, shall be used during the entire term of this Agreement, including all amendments; provided however, Billing Rates may be subject to reasonable adjustments at the discretion of the County. Requests for increases to Billing Rate(s) shall be presented at the same time Labor Rate increases are submitted.
- b. Travel Costs. The Consultant shall only be reimbursed for travel costs while in approved Travel Status. Travel Status shall be limited to out-of-town experts who will be brought to Washington or individuals who reside in Washington and are sent out-of-town for a limited duration. Reimbursement of travel costs, including transportation, lodging, meals and incidental expenses incurred while in a Travel Status in connection with a Work Order is limited as follows:

- (1) That local travel while on Travel Status shall be by bus, taxi or compact rental car;
 - (2) That reimbursement for meals inclusive of tips shall not exceed the limits identified in King County Code 3.24.080;
 - (3) That accommodation shall be at a reasonably priced hotel/motel and shall not exceed the Federal maximum lodging rate limit established by the Federal government for the appropriate locality (41 CFR 301 Appendix A); and
 - (4) That air travel shall be by coach class at lowest available commercial price taking into consideration the costs of transportation, other travel expenses, and salary.
- c. Reproduction, Copies, and Printing Costs. Reproduction or printing services on paper larger than 11" by 17" performed by an independent copy or reproduction company must be reasonable and not be considered by the County to be included within the Lump Sum Other Direct Costs.
 - d. Lump Sum Other Direct Costs. When applicable, each Work Order will establish a lump sum amount for Lump Sum Other Direct Costs. In negotiating the amount for the Lump Sum ODCs, the parties shall utilize the unit rates identified in Exhibit B, Cost Summary. Payment for Lump Sum ODC will be paid in equal monthly installments for the scheduled duration of the Work Order. The parties may agree on additional Lump Sum ODCs, which agreement must be expressed in writing in the executed Work Order. Lump Sum ODCs include:
 - (1) Copies and Other Miscellaneous Reproduction and Duplication Costs. Copies and Other Miscellaneous Reproduction and Duplication is defined to include copying, reproduction and duplication of documents that is not performed by an independent copy or reproduction service, including but not limited to:
 - (a) Photocopies, Merlin plotter, or documents printed on printer, plotter, copier, or similar office equipment;
 - (b) Information printed on vellum, Mylar, transparencies; and
 - (c) Documents copied, printed, or reproduced in any manner in black and white and/or color.
 - (2) Courier Services, Mail, and Delivery Services. Courier Services, Mail, and Delivery Services includes all delivery services including but not limited to couriers, mail, UPS delivery, overnight or second day delivery, etc.
 - (3) Mileage, Parking, and Related Costs for Local Travel. The costs include mileage, parking, and related costs associated with Local Travel. Local Travel is considered travel within the State of Washington.
4. **Fixed Professional Fee (Profit).** The County shall pay a Fixed Professional Fee for each Work Order for all work satisfactorily performed. The exact dollar amount for the Fixed Professional Fee for each Work Order shall be identified in the Work Order and calculated as the product of all direct labor multiplied by the Fixed Professional Fee percentage identified in Exhibit B, Cost Summary.
 - a. The Fixed Professional Fee is developed on the Direct Labor Costs. The Consultant acknowledges and agrees that the Fixed Professional Fee does not and shall not include any profit or other markup on Indirect Costs, subconsulting costs or Other Direct Costs.

- b. The Parties acknowledge and agree that the Fixed Professional Fee is a fixed amount, which cannot be increased because of any differences between the Total Price and/or Work Order budget and actual costs of performing the work required by this Agreement. In no event shall payments to the Consultant exceed said Total Price and Work Order budget.
 - c. The Consultant acknowledges and agrees that the Fixed Professional Fee is only due and payable for project work for which the County has given notice to proceed and which the Consultant has satisfactorily completed. The Fixed Professional Fee will not be paid for any tasks in a Work Order that the Project Representative does not authorize the Consultant to perform. The County is entitled to a deductive amendment for those unperformed tasks.
 - d. The Consultant acknowledges and agrees that the amount of the Fixed Professional Fee may be adjusted by the County to:
 - (1) Reduce the Fixed Professional Fee associated with Work Order that was not authorized by the Project Representative or performed by the Consultant;
 - (2) Reduce the Fixed Professional Fee associated with deletions in the Work Order;
 - (3) Increase the Fixed Professional Fee for additional work added to the Work Order through an amendment.
 - e. The Fixed Professional Fee shall be paid as follows:
 - (1) The Fixed Professional Fee will be paid monthly in proportion to the work satisfactorily completed on an individual Work Order. The proportion of work completed shall be determined by earned value of the deliverables satisfactorily completed. The Work Order shall identify the deliverables for payment of the Fixed Professional Fee.
 - (2) A payment for an individual month shall include that portion of the Fixed Professional Fee allocable to the Work Order satisfactorily completed during said month and not previously paid; and
 - (3) Any portion of the Fixed Professional Fee not previously paid in the monthly payments shall be included in the final payment for the Work Order provided that the Consultant satisfactorily completed the entire scope of work subject to the limitations set forth above.
- C. Unallowable Direct Costs. The County shall not pay for any direct costs or charges associated with or relating to the following activities:
- 1. Any resubmission, changes to or adjustments in the invoices, and fixing improper invoices and the preparation and submission of monthly invoices if this cost is not included in the Consultant's overhead.
 - 2. Preparation of, discussion and/or negotiation of a request for:
 - a. Adjustments in any Labor Rate, Overhead Rate; and
 - b. Travel Status.
 - 3. Preparation for and negotiation of individual Work Orders, including but not limited to proposal preparation; budget preparation; drafting of scope of work and level of effort; and negotiation of scope of work or related level of effort and budget, etc.

4. Preparation for and negotiation of changes to scope of work, including but not limited to request for change, proposal preparation, drafting scope of work, level of effort, and cost summary, and negotiation of scope of work or related level of effort/cost summary, etc.
5. Changing or reassigning personnel or subconsultants, including but not limited to preparing requests concerning Transfer of Knowledge for Key Personnel.
6. Preparation of any documentation related to, discussion of, or negotiation of equitable adjustment, disputes, claims or Section 19, Disputes and Remedies.
7. Compliance with Section 5C, Duty of Confidentiality.
8. Providing the County or its designee(s) with access to Agreement documentation and/or the Work Order file(s).
9. Relocation costs.
10. Meals, except when in Travel Status.
11. Compliance with Section 13, Audit and Access to Records.
12. Office supplies, facsimile machines, cell phones, communication equipment, and other miscellaneous company owned equipment; facsimiles; long distance; computer time charges; computer hardware, software, peripherals; computer support, information technology support.
13. Except as negotiated in the Lump Sum Other Direct Costs, photocopies, or documents printed on a printer, copier, or similar office equipment provided (a) the paper used was no larger than an 11" by 17" piece of paper; and (b) the document was not sent to an independent copy service for duplication.
14. Safety equipment and training.

D. Invoice Process.

1. Invoices shall be submitted to the Project Representative or its designee no later than @____ (INSERT DAY) of each month. Invoice period is for the previous calendar month and shall be computed pursuant to the rates and limitations set forth in the Agreement. Failure to provide timely invoices that comply with the invoice process of this Agreement may result in denial of payment and/or late payment.
2. A properly documented invoice for ConsultantName and subconsultant shall:
 - a. For each individual, detail the work by task, hours, and contract rates for labor, overhead, and fee;
 - b. Include copies of all invoices from authorized subconsultants for which payment is being requested;
 - c. Include only those individuals who are identified in the Agreement or have been approved in writing by the Project Representative
 - d. Itemize and include copies of receipts and invoices for the Other Direct Costs, except Lump Sum Other Direct Costs for which reimbursement is being requested;
 - e. Receipts are not needed for reimbursement of meals if allowed while in Travel Status; and.

- f. Provide a written representation of the accuracy of the rates billed, task completed, allowability, and percentage of work completed.
3. At no time shall the total cumulative amounts paid for each Work Order exceed the total which would be due upon the completion of all work associated with the Work Order multiplied by the percentage of the required work satisfactorily completed, as determined by the County.
4. At no time shall the total cumulative amounts paid for all Work Orders exceed the Total Price.
5. The County will review a timely submitted invoice within thirty (30) calendar days to determine if it is properly documented and inform in writing ConsultantName of any problems with such documentation. ConsultantName shall correct the inaccuracy in the invoice and resubmit within ten (10) calendar days. Once the County receives a resubmitted and corrected invoice, the County shall have 30 days to review and determine if it is properly documented.
6. The County shall pay a properly documented invoice within thirty (30) calendar days after the County has determined that it has received a properly documented invoice
7. The County is not obligated to review or pay an untimely invoice within the time periods described above.
8. The Consultant's contract purchase agreement in the King County Oracle financial system for submitting and processing Invoices is CPA# _____. This CPA number shall be placed on each Invoice submitted by the Consultant to the County.
- E. Prompt Payment of Subconsultants. Within fifteen (15) calendar days of receipt of a progress payment from the County that includes dollars for work performed by subconsultants, ConsultantName shall pay such subconsultants out of such amounts as are paid by the County, for all work satisfactorily completed by the subconsultant. If ConsultantName fails or neglects to make such payment within fifteen (15) calendar days, ConsultantName shall pay to the subconsultant interest computed at one (1) percent per month on amounts due for the period beginning on the day after the required payment date and ending on the day on which payment of the amount is made. ConsultantName shall ensure that this paragraph is included in all subconsultant contracts for work on this project.
- F. Final Payment for Each Work Order. Final payment for work completed by the Consultant for an individual Work Order shall be approved and paid for by the County within sixty (60) days after the following have been fulfilled for that Work Order:
 1. Submittal of a properly documented final invoice from the Consultant;
 2. Satisfactory completion of all work required by Consultant and its subconsultants;
 3. Receipt by the County of all deliverables, documents and tangible items purchased for the County under the Work Order;
 4. Final Affidavits of Amounts Paid: Upon completion of all work and as a condition precedent to final payment for a Work Order, the Consultant shall submit to the County a final Affidavit of Amounts Paid. The submittal shall identify the amounts actually paid, and any amounts owed, to each subconsultant for performance of work under the Work Order. Failure to submit such affidavits may result in withholding of the final payment. Upon written request from the Consultant, the County will provide the Consultant with the affidavit forms; and

5. The acceptance of the final payment by the Consultant will constitute and operate as a release to the County of all claims and liability to the Consultant, its representatives, and assigns, for any and all work performed, furnished, or relating to the services rendered by or in connection with a Work Order or any part thereof. The Consultant agrees to reimburse the County for any overpayment discovered by the County or its authorized representative.
- G. No payment, whether monthly or final, to the Consultant for any project work shall constitute a waiver or release by the County of any claims, right or remedy it may have against the Consultant under this Agreement or by law; nor shall such payment constitute a waiver, remission or discharge by the County of any failure or fault of the Consultant to satisfactorily perform the project work as required under this Agreement.

USE THIS PROVISION INSTEAD FOR FMD CONTRACTS

- A. Subject to the provisions set forth in this Agreement, the ConsultantName will be paid on a monthly basis by the County for authorized and satisfactorily completed work and services rendered under each Work Order. Such payment shall be full compensation for work performed and services rendered, for all supervision, labor, supplies, materials, equipment or use thereof, taxes, and for all other necessary incidentals, but in no case shall such payment exceed the earned value (i.e., percentage of phase work completed) as determined by the County, the individual Work Order budgets, and the Total Price as defined herein. The amount to be paid to the Consultant shall be computed as hereinafter set forth; provided, that such payment shall not exceed a maximum amount of **@ DOLLARS AND NO CENTS (\$@)** ("Total Price"). **King County does not guarantee any minimum amount of work or that the value of the Work Orders executed will equal the Total Price.** In the event the Consultant incurs costs in excess of the individual Work Order budget or Total Price, the Consultant shall pay such excess from its own funds and the County shall not be required to pay any part of such excess and the Consultant shall have no claim against the County on account thereof.
- B. Compensation for work and services shall be on a lump sum basis but not to exceed the Work Order budget. The Consultant agrees that such lump sum amount fully compensates the Consultant for all direct labor costs, indirect costs, other direct costs as described below, as well as profit in the executed Work Order for BASIC and ADDITIONAL SERVICES, as well as any EXTRA SERVICES negotiated as part of the Scope of Work or otherwise set forth herein. Costs to be paid are identified on the Cost Summary form, which is attached hereto as Exhibit B and incorporated herein by this reference, and comprise the following:
 1. **Direct Labor Costs.** Direct labor costs shall be the total number of hours worked on the Work Order by each employee multiplied by the labor rate for such employee's labor category.
 2. **Indirect Costs.** Indirect Costs or Overhead include those costs that may be incurred or allocated by the Consultant as part of the cost of performing the Work but cannot be directly identifiable as a single cost objective. The County will make no adjustment to the overhead rate to account for future Business & Occupational (B&O) taxes associated with the Consultant's costs for this Agreement. These costs will be allowed on a historical basis only.
 3. **Other Direct Costs ("ODCs").** ODCs include any and all costs and expenses that may be incurred by the Consultant for work, including but not limited to:

- a. Travel costs, including transportation, lodging, subsistence and incidental expenses incurred by employees of the Consultant and each of the subconsultants;
 - b. Cost for equipment, materials, and supplies, including but not limited to: equipment rental; telephone and fax expenses; computer costs, reproduction costs, copy costs, blueprinting, photographing, mimeographing, photocopying, Mylar production and printing; overnight and/or express delivery charges; postage, commercial printing, binding, artwork and models; and, computer programming and keypunching costs;
 - c. subcontract/subconsulting services; and
 - d. Other direct costs, if any, not included above, but which are necessary for the completion of the Work Order.
- C. Payments on account of the Consultant's BASIC and ADDITIONAL SERVICES shall be made monthly in proportion to services performed in accordance with the approved Work Order Project Schedule, and, if applicable, shall not exceed the following percentages of the Work Order budget herein at the completion of each Phase of the work:
- 1. Schematic Design Phase (15%)
 - 2. Design Development Phase (35%)
 - 3. Contract Documents Phase (75%)
 - 4. Construction Phase (97%)
 - 5. Post-Construction Phase (100%)
- D. No payment for EXTRA SERVICES shall be made unless such EXTRA SERVICES are approved in writing by the County prior to the performance of such services. EXTRA SERVICES shall be negotiated on a lump sum basis.

SECTION 9. TERMINATION OF AGREEMENT

A. Cure Notice.

- 1. If the County determines that a breach of contract has occurred, that is, the Consultant has failed to comply with any material terms or conditions of this Agreement or the Consultant has failed to provide in any manner the work or services agreed to herein, and if the County deems said breach to warrant corrective action, the following sequential procedure will apply:
 - a. The County will provide the Consultant with a Cure notice; thereby notifying the Consultant in writing of the nature of the breach;
 - b. Unless a longer period is provided by the County, The Consultant shall respond in writing within three (3) business days of its receipt of such notification, which response shall include a corrective action plan indicating the steps to be taken to correct the specified deficiencies. The corrective action plan shall specify the proposed completion date for bringing the contract into compliance within the number of calendar days specified by the County;
 - c. The County will notify the Consultant in writing of the County's determination as to the sufficiency of the Consultant's corrective action plan. The determination of

sufficiency of the Consultant's corrective action plan shall be at the sole discretion of the County;

- d. In the event that the Consultant does not respond within the appropriate time with a corrective action plan, or the Consultant's corrective action plan is determined by the County to be insufficient, the County may commence termination of this contract in whole or in part;
- e. The County may withhold any payment owed the Consultant and/or instruct the Consultant to refrain from incurring additional costs until the County is satisfied that corrective action has been taken or completed;
- f. No increase in Total Price, Period of Performance, or Fixed Professional Fee shall result from this provision; and
- g. Nothing herein shall be deemed to affect or waive any other rights of the County.

B. Termination for Default.

- 1. The County may terminate this Agreement or an individual Work Order, in whole or in part, in writing if the Consultant substantially fails to fulfill any or all of its material obligations under this Agreement through no fault of the County; provided that the Consultant has been given an opportunity to cure.
- 2. If the County terminates all or part of this contract or Work Order for default, the County shall determine the amount of work satisfactorily performed to the date of termination and the amount owing to the Consultant using the criteria set forth below; provided, that (a) no amount shall be allowed for anticipated profit on unperformed services or other work and (b) any payment due to the Consultant at the time of termination may be adjusted to the extent of any additional costs the County incurs because of the Consultant's default. In such event, the County shall consider the actual costs incurred by the Consultant in performing the project work to the date of termination, the amount of work originally required which was satisfactorily completed to the date of termination, whether that work is in a form or of a type which is usable and suitable to the County at the date of termination, the cost to the County of completing the work itself or of employing another firm to complete it and the inconvenience and time which may be required to do so, and other factors which affect the value to the County of the work performed to the date of termination. Under no circumstances shall payments made under this provision exceed the Total Price and/or Work Order budget. This provision shall not preclude the County from filing claims and/or commencing litigation to secure compensation for damages incurred beyond that covered by withheld payments.
- 3. Upon receipt of a termination notice the Consultant shall at no additional cost to the County:
 - a. Promptly discontinue all services affected (unless the notice directs otherwise);
 - b. Terminate all subcontracts to the extent they relate to the work terminated; and
 - c. No later than thirty (30) calendar days after receipt of termination, promptly deliver or otherwise make available to the County all data, drawings, electronic drawing files, specifications, calculations, reports, estimates, summaries, Official Project Documentation and other Work Order documentation, such other information and materials as the Consultant or subconsultants may have accumulated in performing this Agreement, whether completed or in progress

and all equipment/materials purchased specifically for the Work Order where the County has paid the Consultant for such items.

4. Upon termination, the County may take over the work and prosecute the same to completion by agreement with another party or otherwise.
5. If, after termination for default, it is determined that the Consultant had not defaulted, the termination shall be deemed to have been effected for the convenience of the County. In such event, the equitable adjustment shall be determined as set forth below in the Termination for Convenience provision.

C. Termination for Lack of Appropriation.

1. Funding for this Agreement beyond the current appropriation year is conditional upon appropriation by the County Council of sufficient funds to support the activities described in this Agreement. Should such an appropriation not be approved, the Agreement will terminate at the close of the current appropriation year. The appropriation year ends on December 31 of each year. If expected or actual funding is withdrawn, reduced or limited in any way prior to the termination date set forth in this Agreement, or in any amendment hereto, the County may, upon written notice to the Consultant, terminate this Agreement or Work Order in whole or in part. In accordance with King County Code 4.04.040, payment shall not exceed the appropriation for the year in which termination is effected.
2. If the Agreement is terminated for non-appropriation:
 - a. The County shall only be liable for payment in accordance with the terms of this Agreement for work satisfactorily completed prior to the effective date of termination; and
 - b. The Consultant shall be released from any obligation to provide further services pursuant to the Agreement as are affected by the termination.
3. Upon receipt of a termination notice the Consultant shall at no additional cost to the County:
 - a. Promptly discontinue all services affected (unless the notice directs otherwise);
 - b. Terminate all subcontracts to the extent they relate to the work terminated; and
 - c. No later than thirty (30) calendar days after receipt of termination, promptly deliver or otherwise make available to the County all data, drawings, electronic drawing files, specifications, calculations, reports, estimates, summaries, Official Project Documentation, other Work Order documentation, and such other information and materials as the Consultant may have accumulated in performing this Agreement, whether completed or in progress and all equipment/materials purchased specifically for the Work Order where the County has paid the Consultant for such items.
4. Upon termination, the County may take over the work and prosecute the same to completion by agreement.

D. Termination for Convenience.

1. The County may terminate this Agreement or Work Order, in whole or in part, for the convenience of the County. The County shall terminate by delivery to the Consultant a Notice of Termination specifying the extent of the termination and the effective date.

2. If the County terminates this Agreement for convenience, the County shall pay the Consultant only for the following items:
 - a. An amount for Direct Labor Costs and Indirect Costs in accordance with the Agreement and Exhibit B for services satisfactorily performed to the date of termination;
 - b. The Fixed Professional Fee associated with work satisfactorily performed;
 - c. Reasonable invoiced Other Direct Costs actually incurred before the termination;
 - d. Proportion of the Lump Sum Other Direct Costs earned; and
 - e. Reasonable termination settlement costs the ConsultantName actually incurs relating to commitments which had become firm before the termination, unless the County determines to assume said commitments. Reasonable termination settlement costs include settlement costs for subconsultants and reasonable accounting and clerical costs actually incurred by the Consultant in preparing Termination Settlement Proposal.
 - f. Under no circumstances shall payments made under this provision exceed the Total Price or Work Order budget.

USE THIS ALTERNATE PARAGRAPH 2 for FMD ONLY

2. If the County terminates this Agreement for convenience, the County shall pay the Consultant only for the following items, provided however, payment shall not exceed the Total Price:
 - a. A reasonable amount for services satisfactorily performed to the date of termination;
 - b. Costs associated with uncompleted work or services performed and approved up to the date of termination, provided that no payment will exceed the amount that would have been paid had the work or services been completed; and
 - c. Actual and Reasonable termination settlement costs the Consultant reasonably incurs relating to commitments which had become firm before the termination, unless the County determines to assume said commitments. Reasonable termination settlement costs include settlement costs for subconsultants and actual reasonable accounting and clerical costs related to preparing Termination Settlement Proposal.
3. Upon receipt of a termination notice the Consultant shall at no additional cost to the County:
 - a. Promptly discontinue all services affected (unless the notice directs otherwise);
 - b. Terminate all subcontracts to the extent they relate to the work terminated;
 - c. No later than thirty (30) calendar days after receipt of termination, promptly deliver or otherwise make available to the County all data, drawings, specifications, calculations, reports, estimates, summaries, Official Project Documentation, other documentation, and such other information and materials as the Consultant may have accumulated in performing this Agreement, whether completed or in progress and all equipment/materials purchased specifically for the Work Order where the County has reimbursed the Consultant for such costs;

- d. Take any action necessary, or that the County may direct, for the protection and preservation of property related to this Agreement that is in the possession of the Consultant and in which the County has or may acquire an interest.
- 4. Within ninety (90) calendar days of receipt of the notice of Termination for Convenience, the Consultant shall submit to the County a Termination Settlement Proposal. The Termination Settlement Proposal shall include:
 - a. Request for Direct Labor Costs and Indirect Costs for services satisfactorily performed to the date of termination;
 - b. Actual and reasonable Other Direct Costs incurred before the termination;
 - c. Fixed Professional Fee associated only with work satisfactorily completed;
 - d. Reasonable termination settlement costs for terminating subconsultant contracts;
 - e. Actual reasonable costs related to accounting and clerical time spent preparing the Termination Settlement Proposal;
 - f. Documentation supporting the costs identified in the Termination Settlement Proposal; and
 - g. A statement certifying, under penalty of perjury, that the Termination Settlement Proposal is made in good faith, the Termination Settlement Proposal and supporting data are true and accurate to the best of the Consultant's knowledge and belief, the Termination Settlement Proposal is fully supported by the accompanying data, and the amount requested accurately reflects the amount for which the Consultant believes the County is liable.

USE THIS ALTERNATE PARAGRAPH 4 for FMD ONLY

- 4. Within ninety (90) calendar days of receipt of the notice of Termination for Convenience, the Consultant shall submit to the County a Termination Settlement Proposal. The Termination Settlement Proposal shall include:
 - a. Request for costs associated with work or services satisfactorily performed;
 - b. Actual and reasonable costs associated with uncompleted work or services performed and approved up to the date of termination;
 - c. Reasonable termination settlement costs for terminating subconsultant contracts;
 - d. Actual reasonable costs related to accounting and clerical time spent preparing the Termination Settlement Proposal;
 - e. Documentation supporting the costs identified in the Termination Settlement Proposal; and
 - f. A statement certifying, under penalty of perjury, that the Termination Settlement Proposal is made in good faith, the Termination Settlement Proposal and supporting data are true and accurate to the best of the Consultant's knowledge and belief, the Termination Settlement Proposal is fully supported by the accompanying data, and the amount requested accurately reflects the amount for which the Consultant believes the County is liable.
- 5. Termination settlement costs and proposals are subject to audit verification by the County.
- 6. Upon termination, the County may take over the work and prosecute the same to completion by agreement with another party or otherwise.

SECTION 10. SUBCONTRACTS

A. Subcontracts.

1. All subconsultants are subject to prior authorization by the County. Each subcontract shall be available for review and the cost summary subject to review by the Project Representative prior to the subconsultant proceeding with the work. The County hereby authorizes the Consultant to subcontract with the subconsultants listed in the Cost Summary, Exhibit B.
2. ConsultantName shall submit monthly reports detailing all work completed by subconsultants during the preceding month and copies of all invoices relating thereto. Failure to provide timely Monthly Reports that comply with this paragraph may result in denial of payment and/or late payment.

SECTION 11. NON-DISCRIMINATION AND SCS UTILIZATION REQUIREMENTS

A. Nondiscrimination and Equal Employment Opportunity (EEO)

1. Nondiscrimination in Employment and Provision of Services. During performance of this Contract, the Consultant and all parties subcontracting under the authority of this Contract agrees that it will not discriminate against any employee or applicant for employment because of the employee or applicant's sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age except by minimum age and retirement provisions, unless based upon a bona fide occupational qualification.
2. Equal Employment Opportunity Efforts. The Consultant and all parties subcontracting under the authority of this Contract agree to undertake equal employment opportunity efforts to ensure that applicants and employees are treated, without regard to their sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age. The Consultant's equal employment opportunity efforts shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. The Consultant agrees to post in conspicuous places available to employees and applicants for employment notices setting forth this nondiscrimination clause. In accordance with KCC 12.16.010.J, "equal employment opportunity efforts" shall mean active efforts to ensure equal opportunity in employment that is free from all forms of discrimination.
3. Equal Benefits to Employees with Domestic Partners. Pursuant to Ordinance 14823, King County's "Equal Benefits" (EB) ordinance, and related administrative rules adopted by the County Executive, as a condition of award of a contract valued at \$25,000 or more, the Consultant agrees that it shall not discriminate in the provision of employee benefits between employees with spouses, and employees with domestic partners during the performance of this Contract. Failure to comply with this provision shall be considered a material breach of this Contract, and may subject the Consultant to administrative sanctions and remedies for breach.
 - a. When the contract is valued at \$25,000 or more, the Consultant shall complete a Worksheet and Declaration form for County review and acceptance prior to Contract execution. The EB Compliance forms, Ordinance 14823 (which is codified at KCC Chapter 12.19), and related administrative rules are incorporated

herein by reference. They are also available online at:

http://www.kingcounty.gov/operations/procurement/Services/Equal_Benefits.aspx

4. Insert for Professional Services contracts only. Living Wages. In accordance with King County Ordinance 17909, contracts for services with an initial or amended value of \$100,000 or more, the Consultant agrees that it shall pay and require all subconsultants to pay a living wage as described in the ordinance, to employees for each hour the employee performs a measurable amount of Work ("Measurable Work") on this Contract.
 - a. "Measurable Amount of Work" means a definitive allocation of an employee's time that can be attributed to work performed on a specific matter, but that is not less than a total of one hour in any one week period.
 - b. The requirements of the ordinance, including payment schedules, are detailed at: <http://www.kingcounty.gov/operations/procurement/Resources/ordinance-17909.aspx>. Violations of this requirement may result in disqualification of the Consultant from proposing on or being awarded a County contract for up to two years; contractual remedies including, but not limited to, liquidated damages and/or termination of the Contract; remedial action as set forth in public rule; and other civil remedies and sanctions allowed by law.
5. Nondiscrimination in Subcontracting Practices. During the term of this Contract, the Consultant shall not create barriers to open and fair opportunities to participate in County contracts or to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services. In considering offers from and doing business with subconsultants and suppliers, the Consultant shall not discriminate against any person because of their sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age except by minimum age and retirement provisions, unless based upon a bona fide occupational qualification.
6. Compliance with Laws and Regulations. The Consultant and all parties subcontracting under the authority of this Contract shall comply fully with all applicable federal, state and local laws, ordinances, executive orders and regulations that prohibit discrimination. These laws include, but are not limited to, RCW Chapter 49.60, Titles VI and VII of the Civil Rights Act of 1964, the American with Disabilities Act, and the Restoration Act of 1987. In addition, King County Code chapters 12.16, 12.17 and 12.18 are incorporated herein by reference and the requirements in these code sections shall specifically apply to this contract. The Consultant and its subconsultants shall further comply fully with any equal opportunity requirements set forth in any federal regulations, statutes or rules included or referenced in the contract documents.
7. Compliance with Section 504 of the Rehabilitation Act of 1973, as amended (Section 504) and the American with Disabilities Act of 1990 as amended (ADA). Pursuant to Title II of the ADA, and Section 504, King County must not discriminate against people with disabilities in providing services, programs or activities even if those services, programs or activities are carried out by Consultants. The Consultant agrees that it shall provide all programs, services, and activities to County employees or members of the public under this Contract in the same manner as King County is obligated to under Title II of the ADA, and Section 504 and shall not deny participation or the benefits of such services, programs, or activities to people with disabilities on the basis of such disability.

- a. The Consultant agrees to provide to persons with disabilities access to programs, activities and services provided under the Contract or agreement, as required by the disability access laws as defined by KCC 12.16; and
 - b. The Consultant shall not discriminate against persons with disabilities in providing the work under the Contract. In any subcontracts for the programs, activities and services under their Contract or agreement with the County, the Consultant shall include the requirement that the subconsultant provide to persons with disabilities access to programs, activities and services provided under the Contract or agreement, as required by the disability access laws as defined by KCC 12.16, that the subconsultant shall not discriminate against persons with disabilities in providing the work under the Contract and that the subconsultant shall provide that the County is a third party beneficiary to that required provision.
8. Sanctions for Violations. Any violation of the requirements of the provisions of this Attachment 2 shall be a material breach of contract, which may result in termination of this Contract or such other remedy as the County deems appropriate, including but not limited to damages or withholding payment, cancellation or suspension, in whole or in part, of the Contract by the County, or invoking the enforcement provisions of King County Code 12.16 that provide for penalties, liquidated damages or other remedies, and may result in ineligibility for County contracts.
9. Record-keeping Requirements and Site Visits. The County may visit, after reasonable notice, the Project Site, and Consultant and subconsultant offices to review records related to the solicitation, utilization, and payment to subconsultants and suppliers. This provision includes compliance with any other requirements of this Section. The Consultant shall provide all reasonable assistance requested by King County during such visits. The Consultant shall maintain, for at least 6 years after completion of all work under this Contract, and permit access by the County to the following:
- a. Records, including but not limited to written quotes, bids, estimates or proposals submitted to the Consultant by all businesses seeking to participate on this Contract, and any other information necessary to document the actual use of and payment to subconsultants and suppliers on this Contract, including but not limited to data and records related to the Contract for the purpose of monitoring, audit and investigation to determine compliance with any equal opportunity requirements set forth in any federal regulations, statutes or rules included or referenced in the Contract documents; and
 - b. The Consultant shall make the foregoing records available to King County for inspection and copying upon request. If this Contract involves federal funds, the Consultant shall comply with all record keeping requirements set forth in any federal rules, regulations or statutes included or referenced in the Contract documents.
10. Assistance with the Requirements of this Section. Obtain copies of KCC 12.16, 12.17, 12.18 and 12.19 at the following link:
http://kingcounty.gov/~media/Council/documents/Clerk/CodeFiles/2--KCCCode_PDF/15_Title_12.ashx

- a. Address questions related to this Attachment 2 by contacting King County Business Development and Contract Compliance (BDCC) Section at the address below. Please include the contract number in all correspondence.

King County Department of Executive Services
Finance and Business Operations Division
Business Development and Contract Compliance Section
Mail Stop: CNK-ES-0350
401 Fifth Avenue
Seattle, WA 98104

B. Small Consultants and Suppliers Utilization Requirements

1. Policy. It is King County policy that Small Consultants and Suppliers (SCSs) have equitable opportunities to participate in the performance of professional services contracts issued by King County, and that consultants and subconsultants shall afford equal opportunity in employment while providing services for and to King County.
2. SCS Utilization Requirements. In accordance with King County Code 4.19 and its policy on the utilization of Small Consultants and Suppliers (SCS) for County consultant projects, the Consultant shall ensure that at least @ (@%) percent of the total value for all executed work orders shall be performed by King County Certified firms over the life of this Agreement.
3. Definitions.
 - a. "Administrator" means the Director of the Finance and Business Operations Division
 - b. "Small Consultants and Suppliers" (SCS) means that a business and the person or persons who own and control it are in a financial condition that puts the business at a substantial disadvantage in attempting to compete for public contracts. The relevant financial condition for eligibility under the Contracting Opportunities Program is based on a dollar ceiling for standard business classifications set at fifty percent (50%) of the Federal Small Business Administration (SBA) small business size standards using the North American Industrial Classification System (NAICS), and an Owners' Personal Net Worth of less than \$750,000.
 - c. "Certified Firm" is a business that has applied for participation in King County's Contracting Opportunities Program, and has been certified as an SCS by the King County Business Development and Contract Compliance (BDCC) office. Contact the BDCC Office at (206) 263-9734 for information on how to become a certified firm, or to obtain a list of Certified Firms.
4. Determination of SCS Eligibility. King County will count only the participation of Certified Firms towards meeting the SCS Utilization Requirement established for this contract. The County will count the consultant's identified participation as follows:
 - a. SCS participation shall be counted only for SCSs performing a commercially useful function according to custom and practice in the industry. A commercially useful function is defined as a specific scope of work the SCS has the management and technical expertise to perform using its own workforce and resources. An SCS may further subcontract a portion of the work, provided that

the majority of work (at least 51% of the subcontract amount) is actually being performed by the SCS that has the contract.

C. Reporting Requirements During Contract Performance

1. The Consultant shall collect, enter, submit and update the submittals listed below for itself and its subconsultants to King County Business Development and Contract Compliance Section. Such information shall be submitted prior to the County processing and paying any progress payment. The Contract and Apprenticeship Report Tracking System (CARTS) Website is located at <http://www.kingcounty.gov/bdcc>. Telephone 206-263-9734 for assistance. Report forms are available on the Website.
 - a. Create Subconsultants and Suppliers List. The Consultant shall add each Subconsultant and Supplier used on the project . The Consultant shall continually maintain the Subconsultants and Suppliers List. .
 - b. Consultant Payment Reports. The Consultant shall enter and submit the amount received from the County for itself and the amounts paid to all King County Certified SCS firms. Entries shall be made in CARTS on a monthly basis.
2. Amendments to Contract. If the total value for all executed work orders is increased as a result of adding additional work, the Contractor shall ensure that at least @ (%) percent of the total value of all executed work orders, as amended, shall be performed by King County Certified firms over the life of this Agreement.
3. Final Affidavits of Amounts Paid. Upon completion of all work and as a condition precedent to final payment, the Consultant shall upload a final Affidavit of Amounts Paid electronically using CARTS. Identify amounts actually paid, and any amounts owed, to each subconsultant firm and/or supplier for performance under the Contract. Failure to submit such affidavits may result in withholding of payments or the final payment. King County will provide affidavit forms.

D. Compliance with the SCS Requirements

1. Consultant's compliance with the SCS Utilization Requirements is an essential part of the Contract and a material condition of the Contract. The County will evaluate the Consultant's compliance with the SCS Utilization Requirement against the total value for all executed work orders performed by King County Certified firms over the life of this Agreement.
 - a. Unless otherwise determined by the Administrator, the failure of a Consultant to comply with the SCS Utilization Requirement for this Contract shall be deemed a material breach of contract and may subject the Consultant to either: (i) a suspension for a period of not more than six (6) months or (ii) a debarment for a period not more than two (2) years, from consideration for award of contracts with the County.
 - b. Before imposing any sanction, the Administrator shall first provide written notice of a potential violation to the Consultant. The Consultant shall have an opportunity to submit a written reply within ten (10) business days from the date the Administrator's notice of a potential violation is mailed to the Consultant.

SECTION 12. PATENTS, COPYRIGHTS AND RIGHTS IN DATA

- A. Any patentable result or materials suitable for copyright arising out of this Agreement shall be owned by and made available to the County for public use, unless the County determines it is not in the public interest that it be owned or available.
- B. The Consultant agrees that ownership of any plans, drawings, designs, specifications, computer programs, technical reports, operating manuals, calculations, notes, and other work submitted or which are specified to be delivered under this Agreement or which are developed or produced and paid for under this Agreement, whether or not complete (referred to in this Section as "Subject Data") shall be vested in the County or such other local, state or federal agency, if any, as may be provided by separate Contract with the County. The Consultant will not be held responsible for unauthorized reuse by the County of the Subject Data. Any Subject Data which is developed by the Consultant prior to the execution of this Agreement, and not paid for by the County, is not covered by this provision.
- C. All such Subject Data furnished by the Consultant pursuant to this Agreement, other than documents exclusively for internal use by the County, shall carry such notations on the front cover or a title page or in the name block of maps as may be determined by the County. The Consultant shall also place its endorsement on all Subject Data furnished by it. All such identification details shall be subject to approval by the County prior to printing.
- D. All information, materials, data and documentation furnished or made available to the Consultant by the County or its agents and representatives ("County Information") for purposes of performing services on this project shall remain the property of the County. The Consultant shall obtain no proprietary rights or ownership interests to such County Information. Upon the County's written request, the Consultant shall return or cause to be returned to the County all such County Information remaining in the Consultant's possession at the termination or expiration of the Agreement. The Consultant may keep copies of the County Information provided they maintain the confidentiality of the information and obtain the County's prior written consent.
- E. All calculations, notes, draft documents, reports, drawings, specifications, electronic files, including any and all e-mails, and any other materials, information or documentation developed or prepared in the performance of work for this project ("Consultant Information") shall be owned by and treated as County property. The Consultant shall obtain no proprietary rights or interests to such Consultant Information. All such Consultant Information is for use solely with respect to this project. Use of such Consultant information by anyone on other projects or for additions to this project outside the Scope of Work without the specific written consent of the Project Representative is prohibited. Upon the County's written request, the Consultant shall transfer or cause to be transferred to the County all such Consultant Information at the termination or expiration of this Agreement. With prior written consent of the County, the Consultant may keep a copy of the Consultant Information provided the Consultant maintains the confidentiality of such information. Any Consultant Information which is developed by the Consultant prior to the execution of this Agreement, and not paid for by the County, is not covered by this provision.
- F. The Consultant may request from the County a revocable non-exclusive license to use Subject Data, County Information and/or Consultant Information for other matters or projects unrelated to the project.

1. No Subject Data, County Information, and/or Consultant Information shall be used by the Consultant or its subconsultants on any other project or in connection with any other person or entity, unless disclosure or use thereof in connection with any matter other than services rendered to the County hereunder is authorized in writing by the Division Director in advance.
 2. At the time of the request, the Consultant shall in writing provide to the County all necessary documentation which details the purpose, scope, and timing for Consultant's use of such information.
 3. Upon review of the submitted documentation, the County may request additional written materials from the Consultant to assist the County determine whether to grant or deny the Consultant's request for a license
 4. The County's decision regarding Consultant's request shall be final.
- G. The Consultant shall ensure that the foregoing paragraphs are included in each subconsultant's contract for work on the project.

SECTION 13. AUDIT AND ACCESS TO RECORDS

- A. County or its representatives has the right to audit this Agreement and access to all records and documents, including financial data, for a period of not less than six (6) years after Final Acceptance of all construction projects related to this Agreement or until resolution of any litigation related to this Agreement or any related construction contract, whichever occurs later.
- B. The County shall also have access to all records and document, including financial data during the performance of project work if deemed necessary by the County to verify Consultant work and invoices, to assist in negotiations for amendments to the Agreement or modifications to tasks, and to resolve claims and disputes.
- C. ConsultantName, including its subconsultants, shall maintain all records and documents, including financial data and other evidence directly pertinent to performance of the work under this Agreement in accordance with generally accepted accounting principles and practices consistently applied.
- D. Financial information shall include but not be limited to:
 1. A statement about the accounting system indicating the following:
 - a. An overview of the accounting system and its capability to accumulate, distribute, and track costs and provide financial information.
 - b. Written procedures and policies concerning the accounting system, timekeeping, payroll, purchased services and materials, direct and indirect cost control, asset capitalization, depreciation, and pre-Contract costs.
 2. Chart of accounts including definition of what is included in each account.
 3. A statement indicating the basis for the overhead rate if it is historical information. In executing this Agreement, the Consultant certifies under penalty of perjury that the overhead burden rate information separates direct and indirect charges and that no direct charges are included with the indirect charges and that the indirect charges do not include any unauthorized charges per the Federal Acquisition Regulations Part 31, now and as hereinafter amended.

- E. Financial Audits conducted under this Section shall be in accordance with generally accepted auditing standards and established procedures and guidelines of the reviewing or audit agency(ies).
- F. ConsultantName agrees to the disclosure of all information and reports resulting from access to records under this Section provided that the ConsultantName is afforded the opportunity for an audit exit conference and an opportunity to comment and submit any supporting documentation on the pertinent portions of the draft audit report and that the final audit report will include written comments of reasonable length, if any, of the ConsultantName.
- G. ConsultantName shall ensure that the foregoing paragraphs are included in each subconsultant's contract for work on the project.

SECTION 14. PROHIBITED INTERESTS

- A. No member, officer or employee of the County or its governing body, or of any of its component agencies, during such person's tenure or one year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof unless such interest has been disclosed in writing to the County and the County has determined that there are no prohibited conflicts of interest or ethical violations inherent in the circumstances.

SECTION 15. CONTINGENT FEES, GRATUITIES & CONFLICTS OF INTEREST

Consistent with the King County Code 3.04.030, the Consultant agrees as follows:

- A. The Consultant warrants and covenants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees. For breach or violation of this warranty the County shall have the right to terminate this Agreement and/or in its discretion to deduct from the Total Price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.
- B. The Consultant warrants and covenants that no gratuities, in the form of entertainment, gifts or otherwise, have been or will be offered or given by the Consultant or any of its agents, employees or representatives to any official member or employee of the County in an attempt to secure a Contract or favorable treatment in awarding, amending or making any determination related to the performance of this Agreement.
- C. The Consultant warrants and covenants it has no direct or indirect pecuniary or proprietary interest, and that it shall not acquire any such interest, which conflicts in any manner or degree with the performance of the work and services required to be performed under this Agreement and that it shall not employ any person or agent having any such interest. In event that the Consultant or its agents, employees or representatives hereafter acquire such a conflict of interest, the Consultant shall immediately disclose such interest to the County and take action immediately to eliminate the conflict or to withdraw from the Agreement as the County may require.
- D. If the County has reason to believe that the covenants set forth in subparagraphs A, B or C of this Section have been breached, the County shall so notify the Consultant in writing. The Consultant shall respond to said notice within ten (10) calendar days of receipt with a detailed written explanation or answer to any facts, allegations or questions contained or referenced in said notice. The Consultant may request a hearing on the matter by the Department's Director which shall be conducted within fifteen (15)

calendar days of the receipt by the Director of the request, unless the County and the Consultant concur on a later date. The decision of the Director shall be a prerequisite to appeal thereof to the County Council or to Superior Court in the County of King, State of Washington. If, after consideration of the Consultant's response and any hearing, the Director determines that the covenants have been breached, the Director shall have the discretion to exercise those remedies provided by any applicable federal or state laws or regulations or by this Agreement in the event of said breach and/or prohibited conflicts of interest.

- E. The Consultant agrees not to accept employment or compensation from any person, firm, corporation, business or political entity, or third party where such employment or compensation is either:
 - 1. A conflict of interest; or
 - 2. Likely to lead to a conflict of interest between the County's interests and the interests of such person, firm, corporation, or third party.

SECTION 16. LEGAL RELATIONS

- A. The Consultant shall comply, and shall ensure its subconsultants comply, with all the terms of this Agreement and all federal, state and local laws, regulations and ordinances applicable to the work and services to be performed under this Agreement.
- B. In performing work and services hereunder, the Consultant and its subconsultants, employees, agents and representatives shall be acting as independent contractors and shall not be deemed or construed to be employees or agents of the County in any manner whatsoever. The Consultant shall not hold itself out as, nor claim to be, an officer or employee of the County by reason hereof and will not make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the County. The Consultant shall be solely responsible for any claims/costs and/or losses arising from the Consultant's failure to pay wages, compensation, benefits or taxes and/or pay for services, supplies and/or materials provided by Consultant employees, agents and representatives, including subconsultants, and will protect, defend, indemnify and hold the County harmless therefrom.
- C. To the maximum extent permitted by law, the Consultant agrees to indemnify and save harmless King County, its officers, agents and employees from and against any and all suits, claims, actions, losses, costs, reasonable attorneys fees and expenses, penalties, settlements and damages of whatsoever kind or nature arising out of, in connection with, or incident to a breach of contractual obligation(s) under this Agreement and/or the negligent act or omission, strict liability, or willful misconduct by or on behalf of the Consultant, except to the extent caused by the negligence, strict liability, or willful misconduct of the County. For purposes of this Agreement, a breach of contractual obligation(s) shall mean a failure, without legal excuse, to perform any promise which forms the whole or part of the Agreement. The Consultant's indemnity obligation as described herein includes an obligation to (a) satisfy any judgment or other final decision of a court or other tribunal; (b) pay any reasonable settlement negotiated by the County with respect to claims that are within the scope of the indemnity obligation; and (c) pay all claims against the County by an employee or former employee of the Consultant or its subconsultants, and for this purpose, by mutual negotiation, the Consultant expressly waives, as respects the County only, all immunity and limitation on liability under any industrial insurance act, including Title 51 RCW, other worker's compensation act,

disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim.

- D. The Consultant further agrees to defend all claims against King County and its officers, agents, and employees which, if proven, could result in the liability of King County, its officers, agents, or employees for loss or damage caused by a breach of contractual obligation(s) under this Agreement, and/or the negligent act or omission, by or on behalf of the Consultant; provided, however, the Consultant's duty to defend shall not apply to allegations of loss or damage to the extent caused by the negligence, strict liability, or willful misconduct of King County. The Consultant's obligation to defend shall include timely payment of all reasonable attorney fees, costs and expenses incurred in the defense of such claims. For purposes of this Agreement, a breach of contractual obligation(s) shall mean a failure, without legal excuse, to perform any promise which forms the whole or part of the Agreement.
- E. Consultant warrants that any design, process, or product, which the Consultant provides or recommends for use for this project hereunder, shall not infringe on or violate any patent, copyright or other intellectual property right held by others. To the fullest extent permitted by law, the Consultant shall defend, indemnify and save harmless King County, its officers agents and employees from and against any and all liability, loss, claims, demands, suits, costs, fees and expenses (including actual fees and expenses of attorneys, experts, witnesses, and other consultants) by whomsoever brought or alleged, for such infringement of patent rights, copyrights, or other intellectual property rights, except with respect to designs, processes, or products of a particular manufacturer expressly required by the County in writing. Provided however, Consultant shall not be required to defend, indemnify or hold the County harmless if the Consultant incorporates third party commercially available standard products into its design and a third party manufacturer alleges that commercially available standard product violates a patent. If the Consultant has reason to believe the use of a required design, product or process is an infringement of a patent, copyright, or other intellectual property right, the Consultant shall be responsible for such loss unless such information is promptly given to the County.
- F. In the event of litigation between the parties to enforce the rights under this Section, reasonable attorney fees and expenses shall be allowed to the prevailing party.
- G. The Consultant shall not be entitled to, and hereby waives any monetary claims for or damages arising from or related to lost profits and lost business opportunities.
- H. The County's rights and remedies in this Agreement are in addition to any other rights and remedies provided by law.
- I. The indemnification, protection, defense and save harmless obligations contained herein shall survive the expiration, abandonment or termination of this Agreement..

SECTION 17. INSURANCE (REVIEWED BY RISK FOR EACH PROJECT)

- A. Prior to execution of the Agreement, the Consultant shall file with King County certificates of insurance and endorsements from the insurer(s) certifying to the coverage of all insurance required herein. All evidences of insurance must be certified by a properly authorized officer, agent, general agent or qualified representative of the insurer(s) and shall certify the name of the insured, the type and amount of insurance, the location and operations to which the insurance applies, the expiration date, and provides that King County receives notice at least thirty (30) calendar days prior to the

effective date of any policy limit or cancellation of required coverages. The Consultant shall notify the County at least thirty (30) calendar days prior to the effective date of any cancellation or reduction in coverage in the policy. The Consultant shall maintain during the entire Agreement period and for three (3) years thereafter, insurance coverage at least as broad as the limits and coverage outlined in this Agreement. Documentation of coverage shall be provided on each insurance renewal date. The Consultant shall, upon demand of King County, make available to King County at Consultant's local office in King County all such policies of insurance and the receipts of payment of premiums thereon. Failure to provide such policies of insurance within a time acceptable to King County shall entitle King County to suspend or terminate the Consultant's work hereunder. Suspension or termination of this Agreement shall not relieve the Consultant from its insurance obligation hereunder.

- B. The Consultant shall obtain and maintain at a minimum the limits of insurance set forth below. By requiring such minimum insurance, King County shall not be deemed or construed to have assessed the risks that may be applicable to the Consultant under this Agreement. The Consultant shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.
- C. Each insurance policy shall be written on an "occurrence" form; excepting that insurance for professional liability, errors and omissions when required, is acceptable on a "claims made" form.
- D. If coverage is approved and purchased on a "claims made" basis, the Consultant shall continue coverage either through (1) policy renewals for not less than three (3) years from the date of completion of the work which is the subject of this Agreement or (2) the purchase of an extended discovery period for not less than three (3) years from the date of completion of the work which is the subject of this Agreement, if such extended coverage is available.
- E. If, in order to meet the requirements of this Section 17, the Consultant must rely on the insurance to be provided by one or more subconsultant, then such subconsultant(s) shall be required to meet all of the requirements herein applicable to the insurance they are providing, and shall include County and Consultant as additional insureds on all liability policies except Professional Liability/Errors & Omissions and Workers Compensation. The County will not make any payments on work performed by subconsultants until all insurance documentation from such subconsultants has been received and accepted by the County.
- F. Provided the affected insurance policies permit the following waiver, without voiding coverage, Consultant and County waive all rights against each other to subrogation for damages covered by property insurance.
- G. The Consultant shall maintain limits no less than, for:
 - 1. **General Liability.** \$@ combined single limit per occurrence for bodily injury, personal injury and property damage, and for those policies with aggregate limits, a \$@ aggregate limit. Coverage shall be at least as broad as Insurance Services Office form number (CG 00 01) covering **COMMERCIAL GENERAL LIABILITY**.
 - 2. Professional Liability Errors and Omissions. \$@ per claim and in the aggregate.
 - 3. **Automobile Liability.** @Limits per Washington's Mandatory Auto Insurance Law.
OR @\$@ combined single limit per accident for bodily injury and property damage. Coverage shall be at least as broad as Insurance Services Office form number (CA

00 01) covering **BUSINESS AUTO COVERAGE**, symbol 1 “any auto”; or the combination of symbols 2, 8, and 9. If the work involves the transport of pollutants (as defined by the standard auto policy exclusion of pollution) the auto policy shall be endorsed to include endorsement CA 9948 (or its equivalent), MCS 90, or auto pollution coverage.

4. **Workers’ Compensation. Statutory requirements of the State of residency.** Coverage shall be at least as broad as Workers’ Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this work by applicable Federal or “other States” State Law.
 5. **Employer’s Liability or “Stop Gap”.** Coverage shall be at least as broad as the protection provided by the Workers Compensation policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the “Stop Gap” endorsement to the general liability policy.
 6. **Contractor’s Pollution Liability.** Contractor’s Pollution Liability coverage in the amount of \$@ per occurrence and in the aggregate to cover sudden and non-sudden bodily injury and/or property damage to include the physical injury or destruction of tangible property, loss of use, clean up costs and the loss of use of tangible property that has not been physically injured or destroyed.
 7. **US Longshore & Harbor Workers Coverage.** If this Agreement involves work on or adjacent to navigable water, as defined by the U.S. Department of Labor. Then proof of insurance coverage in compliance with the statutory requirements of Longshore and Harbor Workers’ Compensation Act administered by the U.S. Department of Labor) is required.
 8. **Marine Activities, Boat, Floating Vessel.** If this Agreement involves marine activities, or work from a boat, vessel, or floating platform, Consultant shall provide:
 - a. Protection & Indemnity coverage including injury to crew (Jones Act) and passengers; Protection & Indemnity, SP 38, SP23, or its equivalent for \$@ combined single limit per occurrence, and for those policies with aggregate limits, a \$@ aggregate limit
 - b. Hull and Machinery: Hull and Machinery Coverage at Market Value of vessel on American Institute Hull Clauses, 6/2/77 form or its equivalent.
 9. **Pollution Liability (OPA, CERCLA):** \$@ and statutory limits of liability as applicable. Pollution insurance to satisfy U.S. Coast Guard requirements as respects the Federal Oil Pollution Act of 1990 and the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended.
 10. **Aviation Liability.** If this contract involves the use of an aircraft, Owned, Leased, and Hired Aircraft Liability is required for bodily injury, death, property damage, contractual and passenger liability. Limits shall be provided according to the following schedule: over 15,000 lb. Aircraft, a \$15,000,000 per occurrence limit; 10,001 – 15,000 lb. Aircraft, \$10,000,000 per occurrence limit; 5,000 – 10,001 lb. Aircraft, \$5,000,000 per occurrence limit; under 5,000 lb Aircraft, a \$1,000,000 per occurrence limit.
- H. Any deductibles or self-insured retentions must be declared to, and approved by, the County. The deductible and/or self-insured retention of the policies shall not limit or

apply to the Consultant's liability to the County and shall be the sole responsibility of the Consultant.

- I. The insurance policies required in this Agreement are to contain, or be endorsed to contain the following provisions:
 - 1. Liability Policies except Professional Liability & Errors and Omissions and Workers Compensation:
 - a. The County, its officers, officials, employees and agents are to be covered as additional insured as respects liability arising out of activities performed by or on behalf of the Consultant in connection with this Agreement. Such additional insured status shall include Products-Completed Operations.
 - b. To the extent of the Consultant's negligence, the Consultant's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and agents. Any insurance and/or self-insurance maintained by the County, its officers, officials, employees or agents shall not contribute with the Consultant's insurance or benefit the Consultant in any way.
 - c. The Consultant's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.
 - d. The Consultant's Protection and Indemnity @[\(to include Jones Act\)](#) policy shall waive rights of subrogation against the County.
 - e. [The Certificate of Insurance shall state that Explosion, Collapse, and Underground Damage \(XCU\) coverage has not been excluded.](#)
 - f. [The General Liability Policy shall contain a Per Project Aggregate endorsement.](#)
- J. Unless otherwise approved by the County, Insurance is to be placed with insurers with a Best's rating of no less than A:VIII, or, if not rated with Bests', with minimum surpluses the equivalent of Best's surplus size VIII.
- K. Professional Liability, Errors and Omissions insurance may be placed with insurers with a Bests' rating of B+:VII. Any exception must be approved by the County.
- L. If at any time of the foregoing policies shall fail to meet the minimum standards above, the Consultant shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit the same to the County, with the appropriate certificates and endorsements, for approval.

SECTION 18. KING COUNTY RECYCLED PRODUCT PROCUREMENT POLICY

- A. The Consultant shall use recycled paper for the production of all printed and photocopied documents related to the fulfillment of this Agreement and shall ensure that, whenever possible, the cover page of each document printed on recycled papers bears an imprint identifying it as recycled paper. The Consultant shall use both sides of paper sheets for copying and printing. If the cost of recycled paper is more than fifteen percent (15%) higher than the cost of non-recycled paper, the Consultant shall notify the Project Representative, who may waive the recycled paper requirement.
- B. The Consultant shall use recycled/recyclable products wherever practical in the fulfillment of this Agreement.

SECTION 19. DISPUTES AND REMEDIES

- A. Choice of Law. This Agreement and all provisions hereof shall be interpreted in accordance with the laws of the State of Washington in effect on the Effective Date.
- B. Department Director or Director's Designee Review. All claims, counter-claims, disputes and other matters in question between the County and the Consultant arising out of or relating to this Agreement or the breach of it shall be referred to the Department's Director or a designee for determination, together with all facts, data, contentions and so forth which relate thereto. The Director or a designee shall make a determination within thirty (30) calendar days of such referral.
- C. Alternate Dispute Resolution. Should the claim, counter-claims, or disputes not be resolved, prior to initiating litigation and subsequent to the Department Director's decision, the parties shall attempt to resolve the matter through some mutually agreeable form of Alternate Dispute Resolution (ADR).
- D. Exhaustion of Administrative Remedies. Referral to and determination by, the Department Director or a designee and ADR shall be a condition precedent to the commencement of a civil action to adjudicate such dispute.
- E. Jurisdiction & Venue. Subject to these provisions herein, the Superior Court of King County, Washington, shall have exclusive jurisdiction and venue over any legal action arising under this Agreement and the laws of the state of Washington shall apply.

SECTION 20. NOTICE

- A. Any notice required to be given under the terms of this Agreement shall be directed to the party at the address set forth below. Notice shall be considered issued and effective upon receipt thereof by the addressee-party or twenty-four hours after mailing to the place of business set forth below, whichever is earlier.

King County:

Department of @
201 South Jackson Street, KSC-NR-0507
Seattle, WA 98104
Attn: @ PROJECT REP

The Consultant:

ConsultantName
@ ADDRESS
@CITY ZIP
Attn: @PM

SECTION 21. ENTIRETY, AMENDMENT AND EXECUTION OF AGREEMENT

- A. This Agreement merges and supersedes all prior negotiations, representations and agreements between the Parties relating to the subject matter hereof and constitutes the entire agreement between the Parties.
- B. The contract documents included in the Agreement are identified below and incorporated by reference. Any inconsistency or conflict between the contract documents shall be resolved by giving precedence in the following descending order of importance:
 - 1. Agreement for Professional Services for ContractTitle, as modified by the latest amendment;
 - 2. Executed Work Order;
 - 3. Exhibit A, Scope of Work, as modified by the latest amendment;
 - 4. Exhibit B, Cost Summary, as modified by the latest amendment;

5. Exhibit C, Project Schedule, as modified by the latest amendment;
6. Exhibit F, Key Personnel List;
7. Exhibit D, Insurance; and
8. Exhibit E, Non-Discrimination and other Forms.
9. @Exhibit G, WTD Design Deliverables
10. @Exhibit H, Budget Crosswalk
11. @OTHER

C. This Agreement shall be executed in four (4) counterpart copies, any of which shall be considered for all purposes as the original.

SECTION 22. THIRD PARTY RIGHTS

- A. There is no privity of contract between the County and any subconsultants of ConsultantName. Nothing in this Agreement is intended to and/or shall be construed to give any rights or benefits to any subconsultant, individual, company, and/or firm other than County and ConsultantName.

OPTIONAL FOR FMD ONLY:

Section 23. COORDINATION OF ART

- A. The Consultant understands and agrees that it must coordinate its activities with the artist(s) selected by the County to fulfill the County's 1% for Art Program ordinance requirements. The County may separately commission an artist to execute a work of art to be incorporated in a Work Order issued under this Agreement. In such cases, the Consultant shall coordinate with an artist's activities, review artist's work or otherwise participate in development of artist's work. If the work of art is such that competitive bidding for construction is required, the Consultant shall include the artist's bid documents with his own, as the County deems appropriate. The Consultant, however, assumes no liability for the documents or the construction of the work of art. The work required under this provision constitutes ADDITIONAL SERVICES.

OPTIONAL FOR FMD ONLY:

Section 24. MAXIMUM ALLOWABLE CONSTRUCTION COST ("MACC")

- A. The MACC is \$@ and is the total sum available for contract award excluding State of Washington sales tax, professional fees and changes in the Agreement. During all Phases of the work before the receipt of bids, the Consultant shall immediately notify the County in writing if the Probable Construction Cost exceeds the MACC.
- B. If at any time before bids are received it is determined that the MACC will be exceeded, the County shall have the right to direct the Consultant to make changes in the Agreement in areas designated by the County to the extent necessary to bring the Agreement within the MACC, and the Consultant's work in connection with such changes, including identifying, analyzing, preparing, designing and coordinating such changes, shall be a BASIC Service.
- C. The County may, at its option, based upon the Consultant's estimated cost of the work, increase the MACC. In this case, the Consultant may receive a fee increase, which in no

case will exceed the difference between the existing contract amount and an amount determined by the factoring of the appropriate King County fee schedule percentage to the increased MACC.

- D. In order to secure the best possible bid price on construction, the Consultant will recommend and the County will approve items to be bid as additive alternates to the base bid. The Consultant will not receive additional fees for structuring the bid in this manner
- E. If the lowest responsible and responsive base bid exceeds the MACC, then the County shall first implement the itemized alternates, if any, to determine if any bid comes under the MACC and if so, the County will award the construction contract to that bidder if it is otherwise responsive and responsible as determined solely by the County. If all otherwise responsive bids, submitted by responsible bidders, exceed the MACC even after implementation of the listed alternates, then, the County shall have the right to direct the Consultant to revise the Construction Documents in order to bring construction cost within the MACC at no additional expense to the County. The County in this event agrees to cooperate with the Consultant and permit reasonable and necessary reductions in the scope of the Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective authorized officers or representatives as of the day and year written below.

KING COUNTY

CONSULTANT

DEPARTMENT OF @

LegalName

By _____

By _____

@Name of Person Signing, TITLE,

@Name, Title

for Dow Constantine

Date: _____

Date: _____

EXHIBIT A - SCOPE OF WORK

E@@@@@E@@

Exhibit A
Agreement (Work Order)

EXHIBIT B - COST SUMMARY

1. LOE Detail input
2. Cost Summary by Firm
3. Cost Summary by task
4. fees & multiyear escalation
5. other direct costs (ODC) Details
6. Approved labor rates for each firm
7. @ others as necessary

EXHIBIT C - PROJECT SCHEDULE

EXHIBIT D - INSURANCE

E@@@@@E@@

Exhibit D
Agreement (Work Order)

EXHIBIT E - NON-DISCRIMINATION AND OTHER FORMS

NOTE: This exhibit is not to be used for county funded projects.

NOTE: This exhibit is to be used for federally funded projects, unless there is a specific federal agreement to be utilized for the funding source

EXHIBIT F - KEY PERSONNEL LIST

E@@@@@E@@

Exhibit F
Agreement (Work Order)

EXHIBIT G - WTD DESIGN DELIVERABLES

EXHIBIT H - BUDGET CROSSWALK

Exhibit @ - Budget Crosswalk
Project Title
0 Hidden Tasks / 0 Hidden Revisions

Exhibit H
Agreement (Work Order)